

Award No. 11825
Docket No. CL-11010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The hours assigned Ticket Clerk Positions Nos. A-299, A-300, and Relief Clerk No. A-301 and A-302 at Charlottesville, Virginia, are in violation of the Clerks' Agreement.

(b) Employees T. M. Bibbs, W. D. Hughes, H. V. Holliday, D. J. Johnson, John L. Herring and others who may occupy the positions identified in part (a) shall, in addition to all other earnings, be compensated at proper rate of time and one-half for all times worked between 12:00 Midnight and 6:00 A. M., effective April 16, 1958 and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: 1. Prior to April 16, 1958, the Carrier had three Ticket Clerk positions at Charlottesville, Virginia, with assigned hours as follows:

Position No. A-88	8:00 A.M. to 4:00 P.M.
Position No. A-130	4:00 P.M. to 12:00 Midnight
Position No. A-128	12:01 A.M. to 8:00 A.M.

Effective with termination of assignment April 16 and 18 the three positions, with their relief, were "abolished." Two Ticket Clerk positions were bulletined on April 14, 1958 as follows:

Meal Period

Position No. A-299	5:00 A.M. to 2:00 P.M.	9:30 A.M. to 10:30 A.M.
Position No. A-300	6:00 P.M. to 3:00 A.M.	10:30 P.M. to 11:30 P.M.

Position A-299 was assigned to Claimant T. M. Bibb. No. A-300 was assigned to Claimant W. B. Hughes. Relief Clerk Position A-301 was bulletined to

is being done on a three consecutive shift basis does the midnight to 5:00 A.M. starting restriction of Rule 17 apply thereto."

The representative awards cited above as well as others involving different circumstances but with a rule similar to this Carrier's Rule 13(b) show clearly and forcefully that the rule is not restrictive to positions performing a class of work different from those assigned in consecutive shifts.

RULE 13(c) IS APPLICABLE TO THE TICKET CLERKS AT CHARLOTTESVILLE

The Carrier has shown conclusively that the prohibition of Rule 13(b) is not applicable to the two ticket clerk assignments at Charlottesville. The positive aspect of the Carrier's argument is that Rule 13(c) permits the assignment of Ticket Clerk A-299 with starting time of 5:00 A. M. and Ticket Clerk A-300 with ending time of 3:00 A. M.

Rule 13(c) provides that no assignment may have **starting time** between 12:00 Midnight and 5:00 A. M. As Rule 13(b) is inapplicable and as only that expressly provided in Rule 13(c) is thereby prohibited, the 5:00 A. M. starting time of position A-299 is in accord with the Rule.

Rule 13(c) also states that only such assignments as are necessary to meet requirements of the service may be established with **ending time** between 12:00 Midnight and 5:00 A. M. Ticket Clerk A-300 was assigned with ending time of 3:00 A. M. At page 2 of this submission is shown the schedule of passenger trains from Charlottesville Main Street Station. From 12:00 Midnight until 3:00 A. M., Trains 43, 3, 6 and 116 arrive and/or depart. Because of this relatively heavy volume of train arrivals and departures, it is obvious that the position was needed until 3:00 A. M., and such assignment was fully in accordance with Rule 13(c). An ending time of 12:00 Midnight would necessitate establishment of an additional position that would otherwise be unnecessary, which, of course, is not required by the agreement.

The Carrier has shown that the clerical agreement has been met in all respects. A denial award by the Board is in order.

All data contained in this submission have been discussed in conference or by correspondence with the Employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case concerns the application of Rule 13(b) which provides:

"Where three consecutive shifts are worked covering the 24-hour period, no shift will have a starting or ending time after 12 Midnight and before 6:00 A.M."

Until April 1958 Carrier had three Ticket Clerk positions at Charlottesville, Virginia with assigned hours of 8:00 A. M.-4:00 P. M., 4:00 P. M.-

Midnight, and 12:01 A. M.-8:00 A. M. These positions were abolished in mid-April and two new positions established, with assigned hours of 5:00 A. M. to 2:00 P. M. (9:30 A. M.-10:30 A. M. meal period) and 6:00 P. M. to 3:00 A. M. (10:30 P. M. to 11:30 P. M. meal period). Additionally, in order to provide ticket service for Train No. 40 (due to depart 4:30 A. M.), Carrier assigned a 12 to 8 Crew Dispatcher to cover the ticket office between 4:00 A. M. and 4:30 A. M. (except Sunday).

As a result of these new assignments, the ticket office was closed for 7-½ hours each day (8 hours on Sundays):

3:00 A.M. — 4:00 A.M.
 4:30 A.M. — 5:00 A.M.
 9:30 A.M. — 10:30 A.M. (meal period)
 2:00 P.M. — 6:00 P.M.
 10:30 P.M. — 11:30 P.M. (meal period)

Since one of the new Ticket Clerk positions (A-299) had a starting time of 5:00 A. M., and the other (A-300) had an ending time of 3:00 A. M., the Organization grieved, alleging a violation of Rule 13(b). Clearly, if this clause is applicable, the claim must be sustained since 5:00 A. M. and 3:00 A. M. fall within the proscribed Midnight to 6:00 A. M. limits of that provision.

The cited decisions, generally speaking, deal with two types of the three consecutive shift rule. Awards 686, 1395, 5791 and S.B.A. No. 167, Award No. 4 are concerned with precisely the same kind of rule as is found here in 13(b) (although the specified times themselves may differ). In other words, each of these cases concerns the interpretation of a rule which provides that where three consecutive shifts are worked covering the 24-hour period **no shift** will have a starting or ending time within a specified time interval.

The second group of cases, which include Awards 193, 685, 1591, 1641, 5923 and 6427, deal with a rule which declares that where three consecutive shifts are worked covering the 24-hour period the starting time of **each shift** will be between certain specified hours.

In Award 686, the first of the "no shift" rule cases, the Board inquired into the question whether the rule applied to all clerical workers in the same office or, rather, just to those employees engaged in the same class of work or service. The second view was adopted, with these comments:

"... When there is work of a class different from that being performed by employees working in three consecutive shifts, and the work is not sufficient in volume to justify the assignment of men to cover the whole twenty-four hour period, it does not seem unreasonable to permit the carrier to assign one or two employees to such service at hours which best meet the requirements of the service. It is the opinion of the Division that a proper interpretation of Rule 51 permits this."

Applying this holding to the facts before it the Board, in Award 686, found that (1) the work of handling baggage and valuables was different from the work performed by a transfer clerk; (2) the affected employee (who had been given some Baggage-Money Clerk work during his regular tour) was primarily a transfer clerk and only incidentally engaged in handling

baggage and valuables. Accordingly, the Board denied the claim since the use of two Baggage-Money Clerks (assisted for short periods by a Transfer Clerk) did not call for the application of the "no shift" rule, despite the fact that three Transfer Clerks were assigned around-the-clock at the time.

Award 1395 concerned only one type of work — that performed by Car Clerks — and the sole issue was whether or not Car Clerks in two yards constituted a single operating unit for purposes of applying the "no shift" rule. There was no question about 24 hour Car Clerk service being performed in at least one of the yards.

In Award 5791 the Board was faced with an Organization contention that the "no shift" rule applied to **any assignment** at a point or location where continuous shifts are maintained. (The evidence showed that Carrier had assigned nine of its twenty regular clerical positions on an around-the-clock basis; the remaining eleven positions, performing different types of work, were not on this basis.) The Board held, in relevant part:

"... When, at any point or location, a class of work is performed on that basis all positions performing that class of work come within the provisions thereof regardless of whether there are more positions on one shift thereof than on another. But that does not mean that positions performing other classes of work at such point or location, but coming under the Agreement, are restricted by the rule. It is only when the work of the position comes within the class that is being done on a three consecutive shift basis does the midnight to 5:00 A.M. starting restriction of Rule 17 apply thereto."

The principles adopted by the Board in these "no shift" rule cases should be applied here, in our judgment, rather than those set forth in other cited cases concerning differently worded rules and different fact situations. How do they relate to the facts at hand? Basically, the evidence shows that ticket clerks are not employed around-the-clock and ticket clerk work is not performed around-the-clock. While Crew Dispatchers are assigned on a 24-hour basis (as, apparently are Crew Callers) and a Crew Dispatcher spends thirty minutes at the ticket window, these facts do not provide a basis for finding that Ticket Clerk's work is performed on three consecutive shifts covering the 24-hour period and that Ticket Clerks, therefore, come under Rule 13(b).

(It may be noted that S.B.A. No. 167 possibly reached a different conclusion in its Award No. 4 where, under a "no shift" rule, it found "when the third shift of the engine dispatcher position was abolished, the work had not disappeared but continued and was performed by the occupant of the third shift bill clerk's position, on which three consecutive shifts were worked. The assignment of that work to the bill clerks and their acceptance of it demonstrates that it came within the same class as the work regularly assigned to them." Accordingly the "no shift" rule was held applicable. However, it is not clear from this award, how much time was spent by the bill clerk at dispatching work, or whether Third Division Awards 686, and others cited herein, were given any consideration.)

For the reasons assigned above, this claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1963.