

Award No. 12346
Docket No. CL-11920

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Carrier violated the rules of the Clerks' Agreement at Memphis, Tennessee, when on Sunday, May 17, 1959, and each Sunday thereafter it required Clerk R. S. Hayne to suspend work on his regular position No. 250 during regular hours to absorb overtime on position No. 252.

(b) R. S. Hayne be compensated a day's pay at the penalty rate of position No. 252 in addition to remuneration already received for May 17, 1959, and each subsequent day he is required to vacate his position to relieve on rest days of position No. 252.

(c) R. L. Brewton, regular occupant of position No. 252, be compensated a day's pay at the penalty rate of his position for May 17, 1959, and each subsequent day he is relieved on his rest days by occupants of other regular positions.

EMPLOYEES' STATEMENT OF FACTS:

(1) The employees, positions and assignments involved in this dispute were as follows:

Employee	Title	No.	Rate	Hours	Rest Days
R. S. Hayne	Ticket Clerk	250	\$18.91	7:00 A. M. - 3:30 P. M.	Mon. & Tues.
R. L. Brewton	Clerk-Typist	252	18.91	7:00 A. M. - 3:30 P. M.	Sat. & Sun.

Position No. 250 worked seven days each week, Wednesday through Sunday by the regular occupant, claimant Hayne, and on Monday and Tuesday by a regularly assigned relief clerk. Position No. 252 was a five day position with no relief provided on Saturday and Sunday.

to awards concerning the principle of staggering work weeks is an attempt to inject an issue that has no bearing on this claim.

It is obvious that the Employees recognized that any reference to the duties performed by Claimant Hayne would be detrimental to their claim, as this Board would recognize that they were not the exclusive property of Claimant Brewton. Accordingly, they are attempting to justify this claim on an entirely different basis than that presented in their appeal letter.

In conclusion, Carrier would like to emphasize the fact that:

1. The Employees have offered no evidence in their handling of this dispute on the property to substantiate that any of the duties performed by Claimant Hayne on Sundays is the exclusive work of Claimant Brewton's position.
2. No rule of the agreement has deprived management of discretion to plan and apportion work that properly is within an employee's assignment.
3. The Employees have failed to assume the required burden of proof as asserting parties to substantiate that a violation of the agreement occurred.
4. There has been no violation of Rule 38 because no employee has been required to suspend work during regular hours, and no overtime has been absorbed.

Without prejudice to the foregoing, the Board's attention is directed to paragraphs (b) and (c) of the Employees' Statement of Claim which constitutes a request for a double penalty which this Board has consistently stated it will not assess. See Awards 8033, 8013, 8004, 7370, Third Division.

The Carrier asserts that it has conclusively established that the claim before this Board is entirely lacking in merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Where prior to May 1959 all the relevant Clerk positions at Memphis were seven day jobs with two days off covered by relief men and subsequent thereto one job was reduced to a five day job with no relief man was it a violation of the agreement for Carrier to require Claimant to do part of the work formerly performed by the relief man when there is nothing in the record to show that the additional work was exclusively that of the relief position?

We hold no.

As a result of reduction in the service requirements for Ticket Clerks at Central Station, Memphis the relief position assigned to relieve the Clerk-Typist position on Saturday and Sunday was abolished and the assignment was changed from a seven to a five day job. Thereafter the Carrier assigned some of the abolished positions duties (rendering certain reports) to the Ticket Clerk who regularly worked on Sunday. There is nothing in the record to show that this work was performed exclusively by the holder of the abolished position and his relief. As a matter of fact the bulletins for Ticket

Clerk and Clerk-Typist reasonably read include within their descriptions the work here involved.

We do not believe that this Carrier's action violates the Agreement.

All inherent rights of management that the Carrier has not contracted away remains with it.

We are unable to find any restrictions in the Agreement prohibiting Carrier from adding to or taking away any of the duties of a position. That is one of the prerogatives of management.

We have carefully considered Rule 28 relating to Day's Work and Work Week particularly (A) relative to the staggering of the work week and (B) Five-day Positions and (E) (1) Regular Relief Assignments and without setting them forth at length do not find therein any support for the Claimants' position. Nor do we find within the facts here present a violation of either Rule 37 (f) Overtime—Work on Unassigned Days or Rule 38 Absorbing Overtime.

Relative to the last rule the Ticket Clerk worked only the hours of his regular assignment. The additional duties he performed were within the bulletined description of his work. It is significant to note that neither Claimant Ticket Clerk or Clerk-Typist suspended work.

We have examined the matters contained in Employees Exhibits 3 through 10 which are objected to by Carrier as not having properly been submitted on the property. Without going into the merits of Carrier's position as to the admissibility of the Exhibits they do not change the result we have already reached.

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 20th day of March 1964.