

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5440) that:

(a) The Carrier violated the Agreement at Camak, Georgia, on November 22, 1962 and January 1, 1963 (holidays), when it failed to afford Claimant Z. B. Wilson preference to perform the work required on his assigned position of Bill Clerk.

(b) Claimant Z. B. Wilson shall now be compensated two days' pay at proper rate of time and one-half the rate of his position of Bill Clerk for the holidays, November 22, 1962, and January 1, 1963.

EMPLOYEES' STATEMENT OF FACTS:

1. Claimant Wilson, seniority date November 14, 1936, occupies a position titled Bill Clerk at the Carrier's Camak, Georgia agency. Claimant Wilson occupied this position for many years before February, 1951, when he was temporarily assigned to an official position, not covered by the Clerks' Agreement. This promotion of Claimant required that the position be bulletined. A copy of the bulletin is attached and identified as Employees' Exhibit A. It will be noted that the position was then styled "Agency Clerk." The designation, however, was changed to "Bill Clerk" when in 1952 Claimant Wilson returned to Camak, Georgia, and the second trick Bill Clerk position was established. The second trick position was soon abolished, however, and as of the dates covered by this claim, claimant Wilson was the incumbent of the only Bill Clerk position at Camak, he having returned to it after completing his temporary assignment, to an official position, a circumstance which did not require that the position be again bulletined. Therefore, Employees' Exhibit A represents the Carrier's description of Claimant's duties, as they were last bulletined for bids from employees covered by the Clerks' Agreement.

2. In addition to Claimant Wilson's five-day position of Bill Clerk, there are three seven-day positions of Yard Clerk, with relief or swing assignments, so arranged that Yard Clerks are on duty around the clock, seven days a week.

The so-called "pertinent papers" were copies of exchanges of correspondence between local chairman and carrier's trainmaster and general superintendent and indicated the claim was based on the allegation that billing on dates in question was not performed by a clerk, but was performed by agent and telegraph operator. On two occasions the trainmaster requested local chairman to show proof that this was done, but none was offered. In letter of March 6, 1963, from local chairman to general chairman, referring the claim to the general chairman for processing, the local chairman said:

"The issue in these claims is: CAN CARRIER ABOLISH A REGULAR ASSIGNMENT ON HOLIDAYS AND ASSIGN THE WORK TO AN AGENT AND OPERATOR."

and that is the argument advanced on the property as the basis for claim.

At all levels of handling on the property, carrier officials pointed out to Petitioner's representatives that the work was performed by a clerk and at no time did Petitioner offer any proof to the contrary.

It is the position of carrier that claimant does not have the exclusive right to perform all billing at Camak. The work complained of here was performed in the same craft and same seniority district. There is no prohibition against carrier blanking a clerk's job on a holiday and having some minor portion of the work performed by other clerks who are on duty.

In Carrier's opinion, the claim is without merit, and we respectfully request it be declined.

OPINION OF BOARD: The question presented is whether or not Carrier violated its Agreement with the Petitioner when it assigned holiday work which was usually done by Claimant to other employees, who performed this work in addition to their regular work.

In a companion case, decided at the same time and involving the same Claimant, Award 12956, the question was whether or not Saturday relief work formerly performed by a regular relief clerk could be transferred to another relief clerk. Since such work was made part of a regular relief assignment as a result of a reduction of force, we held the transfer proper.

Here, however, we are dealing with holiday work which this Board has held to be work on an unassigned day. It is, therefore, subject to Rule 38 (f) unless a reason be established that it be treated otherwise. Rule 38 (f) and (i) provide:

"RULE 38.

WORK ON UNASSIGNED DAYS

(f) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

(i) In working overtime before or after assigned hours, employees regularly assigned to class work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time (as distinguished from relief work, regularly assigned or otherwise), on holidays or rest days."

Carrier asserts that the work was not exclusively that of the Claimant and that other clerks performed this work. The record indicates that the Claimant normally, customarily and regularly performed this work. Carrier at no time stated that the clerks to whom the work was assigned on these holidays had ever done this work before, and it ignored Petitioner's request for a joint check to establish who did the work.

The question involved here is not one of exclusivity. Rule 38 (f) establishes who is entitled to perform the work on an unassigned day; either an available extra or unassigned employee or the regular employee. It may not be performed by any other employee unless the work is normally part of that employee's position. In such a case, however, the other employee would not be performing holiday work of the employee, but his own.

Carrier argues that there is no prohibition against Carrier's blanking a clerk's job on a holiday and having some minor portion of the work performed by other clerks who are on duty. In Award No. 8563, we said:

" . . . The real question, however, is whether a position may be blanked on a holiday when some of the duties of that position must be performed on that holiday. In our opinion, that question must be resolved in the negative."

We hold that Carrier may not assign holiday work to other employees contrary to Rule 38.

Although Carrier asserts that the duties assigned were minor, there is nothing in the record on which to reach that conclusion. Carrier did not take that position on the property. There is, therefore, no purpose in discussing what effect, if any, the transfer of minor duties would have.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1964.