

Award No. 13386
Docket No. CL-13493

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5186) that:

1. Carrier violated the Clerks' Agreement when on Wednesday, February 22, 1961, a holiday, it required Assistant Agent R. Bowman, a subordinate official, not subject to the Clerks' Agreement, to take over and perform the duties of General Foreman, supervising the work of loading and unloading of less carload freight at the Gratiot Street Platform, which were the regular and normal duties of Rest Day Relief Foreman J. F. Huddleston, who was not permitted to work his regular assignment on that day. This Carrier action was in violation of Rules 1, 2, 3, 5, 24, 25, 26 and related rules of the Clerks' Agreement.

2. J. F. Huddleston shall be compensated for eight hours at the punitive rate, amount \$34.57, for the holiday, February 22, 1961, account not permitted to work on that day.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. F. Huddleston, seniority date August 23, 1923, on the St. Louis Terminal Station and Yards seniority roster, held a regular assignment of Rest Day Relief Foreman position No. 49, which required him to relieve other Foremen at Freight Warehouses on their rest days, as follows:

Saturday	General Foreman, 7th Street, 8AM-5PM, meal period 12N-1PM, Rate \$23.05
Sunday	General Foreman, 7th Street, 8AM-5PM, meal period 12N-1PM, Rate \$23.05
Monday	Warehouse Foreman, 7th Street, 9AM-6PM, meal period 1PM-2PM, Rate \$22.58
Tuesday	General Foreman, Gratiot Street, 8AM-4:30PM, meal period 12N-12:30PM, Rate \$23.05
Wednesday	General Foreman, Gratiot Street, 8AM-4:30PM, meal period 12N-12:30PM, Rate \$23.05
Rest days — Thursday and Friday	

by incurring wholly unnecessary expense and waste of time. No provision of the Agreement has been cited or found so requiring."

There is no provision in the Agreement here involved prohibiting Carrier from excluding holidays in setting up claimant's assignment. In fact, Rule 27 (b) reproduced above specifically provides therefor.

The above quoted excerpts from Opinion of Board in Award 8218 are equally applicable in the case under consideration, and for the reasons therein stated the instant case should likewise be denied.

Award No. 6 rendered by Special Board of Adjustment No. 166 covers a case on this property where the Clerks' Organization took exception to and filed a claim account of Carrier establishing a position of Assistant Agent to supervise operations at its local freight stations in Kansas City, Missouri, the Employees contending that this position took over and performed some of the duties of a former clerical position. Copy of this award is attached hereto as Carrier's Exhibit "D". The following excerpt is quoted from Opinion of Board in that Award which denied the contention and claim of the Employees:

"It appears that the work complained of is that of supervising and directing the work of warehouse employees, which is alleged to be work formerly performed by the General Warehouse Foreman. However, the docket indicates that the work of the Assistant Agent consists simply of an extension of the supervision of the warehouse, formerly performed by the Agent and his one Assistant prior to February 1953."

Carrier has hereinabove conclusively established that there has been no violation of the Clerks' Agreement in the instant case. It is respectfully submitted therefore that the Employees' contention should be rejected and the accompanying claim denied.

The substance of matters contained herein has been the subject of discussion in conference and correspondence by the parties to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On Tuesday, February 21, J. F. Huddleston, a Rest Day Relief Foreman was notified that his usual Wednesday position as General Foreman, Gratiot Street Station, would be blanked because of the Washington's Birthday holiday. On the same day the Carrier notified two check clerks and six laborers to report for unloading of city freight on the holiday. Due to the unforeseen volume of freight received, Assistant Agent Bowman who normally worked at the Miller Street Freight Office went to the Gratiot Street Freight House to check on the situation. Additional help was called in to handle the work. The Organization filed the instant claim for the earnings lost by Huddleston due to the Carriers failure to assign him to work on February 22, 1961.

The Organization contends that the Assistant Agent improperly performed work on February 22, 1961 which is delegated to foreman subject to the Clerks' Agreement and which they perform exclusively seven days per week. It argues that the Claimant as Rest Day relief Foreman was entitled to this work on the day in question and that the position was improperly blanked. Accordingly it seeks compensation for earnings lost.

The Carrier takes the position that the work of General Foreman is not specifically reserved to them under the parties' Agreement; and that the

Organization has not proved that they exclusively perform the task of that position. It argues that the work involved on February 22nd was an integral part of the Assistant Agents responsibilities which he ordinarily performed while acting in that capacity. Therefore, it concludes that the claim lacks merit.

Two dependent questions are raised by a claim of this nature. The first is whether the tasks performed by the General Foreman and his Rest Day Relief have customarily and normally been performed in such a manner as to give the Claimant jurisdiction over them to the exclusion of the Assistant Agent. If this question is answered in the affirmative, then we must turn to the second question which is whether, recognizing the exclusivity of the General Foreman's position, the Assistant Agent acted in such a manner as to encroach upon the Claimant's rights.

A careful examination of the evidence in this case convinces that even if exclusivity had been proven, the actions of the Assistant Agent did not violate the rights of the Claimant on February 22, 1961. It is not necessary, therefore to rule on the question of whether the General Foreman had exclusive jurisdiction over the tasks involved, because there has been no showing that the Carrier acted improperly even had exclusivity been established.

The Carrier clearly had the right to blank a position on the holiday in question (7136). It is likewise clear that it respected that blanking having given necessary directions to employes on the preceding day. When the volume of business exceeded the small amount anticipated for the holiday, the proper individual, General Warehouse Foreman Sullivan, who regularly called in extra personnel did so in this case. There is no question that the Assistant Agent was present on occasions during the day in dispute but this was consonant with his responsibilities for general supervision of freight operations. There has been no convincing showing that he performed Claimants work. The Organization has not met the burden of proving that the Assistant Agent infringed upon the alleged exclusive jurisdiction of the Claimant.

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 Employes involved in this dispute are respectively Carrier and Employes 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 26th day of February 1965.