

Award No. 13527

Docket No. CL-13495

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5179) that:

(a) The Carrier violated and continues to violate the rules of this Clerks' Agreement, particularly Rule 13, when it abolished a five-day position, Monday through Friday, and in lieu thereof advertised a position with a work week of Tuesday through Saturday, on which work is not necessary or required on each Saturday; and

(b) Mr. M. T. Clark and/or his relief or successors shall now be compensated for eight (8) hours at the overtime rate of pay on each Monday, beginning April 3, 1961, less what had been allowed for service performed on April 3 and June 5, 1961, and continuing until the violation is corrected by including Monday as the first work day of his work week on the position of Assistant Chief Clerk at Elko, Nevada.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the position of Assistant Chief Clerk in the Superintendent's Office at Elko, Nevada, was a six-day position, working Monday through Saturday, with Sunday as the single rest day. With the advent of the 40-Hour week, effective September 1, 1949, the position of Assistant Chief Clerk held by Mr. M. T. Clark was classified to a five-day position, Monday through Friday, with rest days of Saturday and Sunday. This assignment remained in effect until it was abolished through Supt. J. F. Lynch's letter of March 14, 1961, (Employes' Exhibit "1") addressed to Mr. M. T. Clark, which abolishment was effective at the end of the assigned hours Friday, March 31, 1961.

On March 15, 1961, Supt. Lynch issued Clerks' Circular No. 13-61, (Employes' Exhibit "2") advertising position of Assistant to Chief Clerk, which to all intents and purposes was the position of Assistant Chief Clerk abolished through his letter of March 14, 1961, (Employes' Exhibit "1") except that the work week was to be Tuesday through Saturday with rest days of Sunday and Monday.

Following the abolishment of the position of Assistant Chief Clerk in the Superintendent's Office at Elko, as revealed in Employes' Exhibit "1", Mr. M. T. Clark bid for and was assigned to position of Assistant to Chief Clerk

not performed. No rules of the governing Agreement have been cited by the Employees to support the monetary penalty prayed for in this claim.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant occupies an assignment on the position of Assistant Chief Clerk in the Division Superintendent's office at Elko, Nevada, as the result of being the successful bidder under Circular No. 13-61, March 15, 1961, which advertised the position as one of six-day service, with rest days, Sunday and Monday, beginning April 1, 1961. Claimant was formerly assigned to the position of Assistant Chief Clerk on a five-day basis, which position was abolished effective May 31, 1961 by letter dated March 14, 1961 from the Division Superintendent.

Simultaneously with the establishment of the position of Assistant Chief Clerk in six-day service, the duties of issuance of job circulars and the keeping of records in connection with the regulation of enginemen's mileage were also assigned to the position of Head Timekeeper. The workweek of the Head Timekeeper's assignment is Monday through Friday, with rest days Saturday and Sunday. Therefore, the workweeks of the two positions are staggered to provide six-day service of the functions described supra.

The fundamental question involved in this dispute is whether the nature of the work involved is such that will require six-day service per week, thereby coming under Rule 13(c), as the Carrier urges, or whether the work is such that requires service only on a five-day basis, thereby invoking the provisions of Rule 13(f) as the Organizations contends.

The primary argument advanced by the Organization, is that the service was not performed on each Saturday during the three years prior to the claim. We are of the opinion that there has been substantial compliance with the terms and conditions set forth in Rule 13(c), to negate therefore, any attack upon Carrier's action in proceeding under this rule. It is adequately shown that it is not possible to know in advance exactly when Claimant's service will be required. It is therefore necessary to have employes available to perform the services should the necessity arise. In this regard, the record discloses that this work does in fact necessitate a six-day position. We are of the opinion that the Carrier was within the contractual limits of Rule 13(c), when it acted as it did in this case.

The Organization further contends that it is a violation of the agreement to stagger five-day positions with six-day positions. They cite Awards 8531 and 8563 in support of this position. These awards appear to us to be against the great weight of authority in this area, and we do not choose to follow them as precedent for the instant claim. We are of the opinion that the overwhelming preponderance of awards of this division support the Carrier's position that it is not restricted by the agreement from staggering the positions.

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 29th day of April 1965.