

Award No. 14904
Docket No. CL-14426

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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-5435) that

(a) Carrier violated the Clerks' Agreement when it required a shop Foreman to perform work, formerly assigned to clerical position designated Clerk-Caller, on Saturdays and Sundays beginning August 18 and 19, 1962.

(b) Carrier further violated the Clerks' Agreement when it failed to allow or timely notify the claimant's representative of the disallowance of claim filed on November 14, 1962.

(c) Carrier shall now compensate Claimant R. C. Hitt eight hours at rate of time and one-half for Saturday, August 18, Sunday, August 19, 1962: for Saturday, September 22, Sunday, September 23, and for each Saturday and Sunday thereafter on which Foreman or others not covered by the Agreement are required to perform Clerk-Caller work.

EMPLOYEES' STATEMENT OF FACTS: 1. Prior to August 14, 1962 there were three positions of Clerk-caller, fully covered by the Clerk's Agreement, at the Carrier's Augusta, Georgia shops and roundhouse. The Clerk-Callers assigned hours were respectively: 7:00 A. M. to 3:00 P. M., 3:00 P. M. to 11:00 P. M. and 11:00 P. M. to 7:00 A. M. Rest days of the three positions were included in relief assignments, so that a Clerk-Caller was on duty twenty-four hours a day, seven days a week. By bulletin No. 3549, dated August 6, 1962 the Carrier claimed to abolish all Clerk-Caller assignments, and to advertise three "new" positions of Clerk-Caller (Employee's Exhibit A-1).

By bulletins dated August 14 and 24, 1962 the hours of assignment of the three Clerk-Caller positions were changed. (Employee's Exhibit A-2 and A-3). The Clerk-Caller assignments then became:

Assignment No. 1: Monday through Friday, hours 3:00 P. M. to 11:00 P. M.

always been the practice of the foremen to handle crew assignments, making note of what transpired during clerk's absence and giving him the information on his return so clerk could make proper entry in his records. This procedure was followed on Saturday and Sunday when clerk was cut off. In other words, if any calling is necessary, roundhouse foreman does same and furnishes the data to second shift clerk who enters same into the records.

Petitioner has taken no exception to abolishment of first shift crew-caller and re-assignment of work on the shift, but has taken exception to foremen calling crews on Saturday and Sunday, and the claims involved herein cover Saturdays and Sundays only.

Inasmuch as the foreman is only doing what he had done in the past in the absence of clerk-caller, Carrier could see no merit to claim and it was declined at all levels on the property.

OPINION OF BOARD: It is nowhere disputed in the record that calling of crews on Saturdays and Sundays was only incidental to the work performed by the former Clerk-Callers; that calling crews took a maximum of thirty (30) minutes each on the first and second shifts and one hour on the third shift. The record also shows that, in the absence of a clerk, it has been established practice for the foreman to call crews. Thus, the calling of crews by the foreman on the first shift on Saturdays and Sundays was incidental work which foremen had performed in the past.

The Scope Rule does not define nor does it describe the work of Clerk-Callers. In the absence of such a definition or description the right to call crews is determined by the history, custom and tradition on the property. The history, custom and tradition on this property is that foremen have called crews when a clerk is not available and when such work is only incidental to and is a minor part of the total work assignment.

Employees filed this claim on November 14, 1962, and it was denied by the Master Mechanic on February 19, 1963, more than sixty (60) days thereafter. Although Carrier did not comply with the provisions of Article V of the August 21, 1954 Agreement, it should be noted that this is a continuing claim and as such the liability of the Carrier is limited to the date when the Employees received Carrier's denial. See National Disputes Committee Decision No. 16 and Awards 14603, 14502 and 14369. Thus, Carrier's liability is limited to February 20, 1963.

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 Carrier did not violate the Agreement, but did not comply with Article V of the August 21, 1954 Agreement as stated in the Opinion.

AWARD

Item (a) is denied.

Item (b) is sustained in accordance with the Opinion.

Item (c) is sustained to the extent that Carrier's liability is limited to

February 20, 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1966.