



Award No. 15628

Docket No. CL-15988

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

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

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

(1) Carrier violated the rules of our current working agreement, particularly Rule No. 47, when on Tuesday, April 6th and Wednesday, April 7th and again on Tuesday, April 13th and Wednesday, April 14th, 1965, Mr. J. Hartline, Chief Clerk Car Accounts, instructed Mr. Bruce Renn to prepare the interchange reports for these days. Compiling, preparing, and distributing interchange reports has been assigned to the position of Chief Clerical Machine Operator at the rate of \$25.44 per day, by bulletin No. 322, dated October 2, 1965, which is assigned as a five day position, Rule No. 47 reads in part as follows: (b) Five day positions — on positions the duties of which can reasonably be met in five days the off days will be Saturday and Sunday." The Saturday and Sunday rest day provisions were changed by the I.B.M. agreement dated September 30, 1963. However no provisions is made for this position to work seven (7) days a week.

(2) Carrier be required to pay Mr. A. S. Maley the occupant of the chief clerical machine operator position, for one days pay at the overtime rate of \$25.44 per day for each of the above mentioned dates and continuing until a relief is established for this position on Tuesdays and Wednesdays or the assigned days of rest are changed to Saturday and Sunday in compliance with Rule No. 47 of our current agreement.

CARRIER'S STATEMENT OF FACTS: Carrier asserts the Agreement of May 1, 1957, between the Kentucky & Indiana Terminal Railroad Company and the Brotherhood of Railway Clerks, and the Memorandum of Understanding and Attachments dated September 30, 1963, were in effect on the date the instant claim arose.

A .S. Maley is regularly assigned to the position of Chief Clerical Machine Operator at the Carrier's Bank Street office, Louisville, Kentucky, hours 8:00 A. M. to 5:00 P. M., rate of \$26.14, (rate effective 1/1/66) rest days Tuesday and Wednesday.

When the Carrier on or about October 1, 1963 inaugurated the I.B.M. mechanization of procedures to handle all of their Car Accounting and Record work, formerly performed manually; it was mutually understood and agreed that the duties of the Chief Clerical Machine Operator, which were necessary to be performed on the Tuesday and Wednesday rest days, were to be performed, if necessary, by the Chief Clerk Car Accounts. And as long as the former Director of Personnel, who was the Carrier's representative who negotiated the Agreement, was with the Carrier there was no violation, insofar as the Organization was concerned.

However, less than a year later, two of the principal officers were replaced, the President and the Director of Personnel, this latter position was given the title of Director of Labor Relations.

Shortly after this change there were many positions that were abolished in our craft, work assignments changed, etc. Then early in 1965 the Carrier discontinued previous handling of the preparation and distribution of the interchange report, which had been heretofore performed in the manner as the parties had agreed to, when the I.B.M. Agreement was signed. And this was the practice wherein the Chief Clerk Car Accounts performed the handling and preparation of the interchange report.

Therefore, when informal efforts by the employees failed to compose this matter, claim was filed on April 21, 1965 and said claim was denied in a letter dated May 27, 1965, from the General Freight Agent. (Employees' Exhibit A). Subsequent handling on appeal in conference with Director of Labor Relations brought no satisfactory settlement of the claim and resulted in a denial again by the Carrier on September 20, 1965. (Employees' Exhibit B). Further attempts by the Employees to resolve this claim on the property only resulted in the Carrier advising Mr. S. H. Schulty, Executive Secretary of this Honorable Board, of its intent to file ex parte submission under date of October 12, 1965. (Employees' Exhibit C.)

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case is the occupant of the Chief Clerical Machine Operator position, who by virtue of a special Memorandum of Agreement, is assigned to work Thursday through Monday with Tuesday and Wednesday as rest days. A significant portion of his job is to perform "the necessary supervisory machine duties on Saturday and Sundays, while the Chief Clerk, Car Accounts, is observing his rest days." The Chief Clerk, Car Accounts, on Claimant's rest days, instructed the occupant of a Clerical Machine Operator's position, a lower rated job, to prepare the interchange reports on the days in question. Claimant demands one day's pay at the overtime rate for each day in question and "continuing until a relief is established for this position on Tuesdays and Wednesdays or the assigned days of rest are changed to Saturday and Sunday in compliance with Rule 47 of the Agreement."

Carrier contends that the position of Chief Clerical Machine Operator does not meet the definition of a five day position as defined in Rule 47(b) and as alleged by the Organization:

"(b) Five-Day Positions — On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday."

Carrier basis its conclusion on the language contained therein, to wit, the position would have Tuesday and Wednesday as rest days. We concur.

Carrier avers that it does however meet the definition of a five-day relief assignment of the General Agreement. We further concur.

"RULE 47

(e) Regular Relief Assignments — All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six and seven day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement."

Carrier further contends that, since the installation of the I.B.M. equipment, the Claimant has relieved the Chief Clerk, Car Accounts, on his rest days Saturday and Sunday, and that on Mondays, Thursdays and Fridays, he performs other work properly assigned under the Agreement, which includes, among other duties, preparation of the interchange reports.

A review of the bulletin describing the preponderating duties of Chief Clerk, Car Accounts, lists among others "A thorough knowledge of Car Accounting procedures, including Car records, calculation, preparation and distribution of per diem and reclaim reports; preparation of interchange reports," while a review of the bulletin describing the preponderating duties of Chief Clerical Machine Operator, states "A thorough knowledge of compiling, preparing and distributing per diem, reclaim, interchange and any other reports" etc.

In order for the Claimant to be successful in his claim before this Board, he would have to show by a preponderance of evidence that the work involving interchange reports was exclusively his work. The evidence before us indicates otherwise. Other personnel perform the work. Further we are convinced that this particular work is not exclusively assigned to one position, that it is general clerical work, that it is incidental to the main duties and responsibilities of Claimant's position, that it is accomplished in approximately 2½ hours, and that in conclusion, to take an isolated task such as this and call the Claimant on his rest days to perform it, is a strained and torturous construction of the applicable Agreement which we are not prepared to make. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 16th day of June 1967.

LABOR MEMBER'S DISSENT TO AWARD 15628, DOCKET CL-15988

Award 15628 is based on the premise that the position of Chief Clerical Machine Operator is not a five day position. While the Referee is ever so quick to agree with Carrier's definition of a five day position and Carrier's averment that the position meets the definition of a five day relief assignment, he chose not to recognize or even attempt to explain the special agreement of September 30, 1963, that did, in fact, establish the position as a five day position.

Paragraph 4 of the September 30, 1963, agreement stated in part:

" * * * It is understood that the position of Chief Clerical Machine Operator will be a five day position with rest days Tuesday and Wednesday. The occupant of this position will perform the necessary supervisory machine duties on Saturdays and Sundays, while the Chief Clerk, Car Accounts, is observing his rest days. * * *." (Emphasis ours.)

Clearly, as implemented and understood, the "quid pro quo" for that agreement was that the "Chief Clerk, Car Accounts" would perform Claimant's work on his Tuesday and Wednesday rest days.

After almost two years other commenced performing Claimant's interchange work on his rest days, e.g., "The Chief Clerk, Car Accounts, on Claimant's rest days, instructed the occupant of a Clerical Machine Operator's position, a lower rated job, to prepare the interchange reports on the days in question." (Emphasis ours.)

Therefore, Claimant rightly filed claim, for the agreement was violated, and claimed the right to perform his normal and regularly assigned work of making the interchange reports inasmuch as the special agreement was being ignored.

The interchange work required at least 2½ hours and there can be no dispute over the fact that Claimant, the Chief Clerical Machine Operator, normally and regularly performed that work except when, by agreement, it was performed by the Chief Clerk, Car Accounts on Claimant's rest days. (In Award 15629 the Referee stated: "There is no dispute that the preparation of such reports is done by the higher rated position." i.e., The Chief Clerical Machine Operator or Chief Clerk, Car Accounts.)

Contrary to the Referee's position it would not require a strained and torturous or even tortuous construction of the applicable rules to find that Claimant was entitled to be called to perform even 31% of his regular assignment if it were not performed as per the special agreement, by the Chief Clrk, Car Accounts.

By this Award the Referee has permitted Carrier to renege on an agreement as to conditions forming the basis for the special agreement heretofore mentioned and complied with for almost two years.

I simply feel that it is wrong to permit such actions. I also feel that the only thing thus far strained and tortured is the employe's right when coming before this particular Referee. (See my dissents to his Awards 15629 and 15630.) I feel that Award 15628 is another award wherein his personal predilections outweigh anything the employees can offer and I dissent thereto.

D. E. Watkins
Labor Member
7-7-67

CARRIER MEMBERS' ANSWER TO DISSENTS TO AWARDS 15628, 15629 AND 15630

These awards are correct both in the evaluation of the facts and the application of rules. The Dissenter had the opportunity, both in panel and by brief, to convince the Referee of the soundness of his position and nothing he has now said in his dissents detracts from the awards.

It is our understanding that the purpose of a dissent is to show where an award is in error; however, it is obvious that the Dissenter is using the dissent for a purpose other than intended.

J. R. Mathieu
R. A. DeRossett
W. B. Jones
C. H. Manoogian
W. M. Roberts