

Award No. 15799
Docket No. CL-15840

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5803) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Ogden, Utah, when on August 24, 1962, it notified Mr. Frank L. Horspool, Section Stockman No. 406, that his rest days would be changed from Saturdays and Sundays to Wednesdays and Thursdays, effective with the close of his shift on Friday, August 31, 1962; and,

(b) The Southern Pacific Company shall now be required to allow Mr. Frank L. Horspool four hours' additional compensation at pro rata rate of Position No. 406 September 1 and 2, 1962, and each Saturday and Sunday thereafter that he is required to perform service thereon at pro rata rate; and eight hours' additional compensation at pro rata rate of Position No. 406 September 5 and 6, 1962, and each Wednesday and Thursday thereafter that he is not permitted to perform service thereon.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

On August 24, 1962, Mr. C. E. Beyer, Storekeeper, Ogden, wrote the following letter to the Claimant:

"P/R Ogden, Utah
August 24, 1962

- Personal -

Personnel, and by letter dated December 16, 1964 (Carrier's Exhibit H), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to August 31, 1962, Claimant's Section Stockman position was scheduled to work Monday through Friday, with Saturday and Sunday as rest days, and no one assigned to relief on the rest days; on August 24th, by letter, Carrier informed Claimant that the schedule for the position was changed to make the rest days Wednesday and Thursday. Thereafter, work previously performed on Saturdays and Sundays by a reliefman working as a Stores Attendant was performed by Claimant's position.

Brotherhood claims that Carrier violated Rule 9(b) in setting the rest days for Wednesday and Thursday, arguing that the duties of the position can reasonably be met in five days. Rule 9(b) reads:

"(b) Five-Day Positions.

On positions the duties of which can be reasonably met in five days, the days off will be Saturday and Sunday."

We said in Award 12565 in discussing Rule 9:

"Our Awards have settled that the word 'position' is meant in this context to cover a span of work, not the time during which one employe is assigned to it. Thus, in Award 7769, we defined a 'six-day position' as having the 'plain meaning' of 'A position, the work specifically attached to which is necessary to be performed on six days each week, regardless of which employe or employes actually perform that work. . . .

Therefore, to determine whether a particular body of on-going work is a 'Five-Day Position', we must apply the criterion which is stated in Rule 9(b) under the heading: 'whether the duties can reasonably be met in five days', in which event the jobs assigned to such must have Saturday and Sunday rest days."
(Emphasis ours.)

To make its prima facie case here, Brotherhood must prove that "the work specifically attached" to the position occupied by Claimant could reasonably have been performed in five days a week. Brotherhood in this record has asserted that the principal duties of the position in question are not required to be performed on Saturdays and Sundays; and that the issuance of materials and making deliveries, which duties, according to Brotherhood, are all that are required in the Stores Department on Saturdays and Sundays, are "duties which are not within the purview of a Section Stockman's assignment."

Carrier rebuts this, however, by asserting that the Saturday and Sunday work formerly performed by the Store Attendant was properly assigned as part of the duties of the Section Stockman, and Carrier cites cases which support this. There is nothing in the record to show whether or not issuance of materials and making deliveries were among the duties performed on other days by the Section Stockman position.

The "principal" duties of a position do not necessarily include all of the work specifically attached to it. As noted above, there is no evidence that the duties formerly performed on Saturdays and Sundays by the Store Attendant were not also among the duties specifically attached to the Section Stockman position. In the face of rebuttal statements by Carrier, in order to establish the assertions firmly enough as fact to support a prima facie case, Brotherhood should have supplied adequate evidence; there is not such adequate evidence in this record.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1967.