



Award No. 16255

Docket No. CL-16657

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

**ATLANTA AND WEST POINT RAIL ROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6168) that:

(1) The Carrier violated and continues to violate the rules of the Clerks' Agreement, effective May 1, 1942, as amended, at LaGrange, Georgia, when it arbitrarily and unilaterally failed and refused to afford Claimant Cashier D. H. McCrary preference to perform the regular work attached to his position on Tuesday, February 22, 1966 (one of the regularly scheduled holidays as per Rule 39), but permitted an employe junior in service to perform this work, and that, therefore:

(2) Claimant Cashier D. H. McCrary shall not be compensated for one (1) day's pay at penalty rate on Tuesday, February 22, 1966 at the rate of his regular position.

EMPLOYEES' STATEMENT OF FACTS: February 26, 1966 Vice General Chairman S. S. Shepard filed a claim with Trainmaster J. H. Zachry, copy of which is self explanatory, and is hereto attached and identified as Employees' Exhibit No. 1.

Attached are copies of bulletin of May 1, 1961 and May 8, 1961 wherein the duties of the junior clerk, in this case Mrs. Wauline S. Moncrief, are outlined. These bulletins are designated as No. 2 and 2A respectively.

March 21, 1966 Trainmaster J. H. Zachry replied to Vice General Chairman's claim of February 26th and admitted in his letter that Mrs. Moncrief, the junior employe in this case, was called back to work her regular assignment and, in connection therewith, performed the work herein protested, and copy of Mr. Zachry's letter is hereto attached and identified as Employees' Exhibit No. 3.

March 26, 1966, the Vice General Chairman rejected Trainmaster J. H. Zachry's decision as outlined therein, Employees' Exhibit No. 4.

Claim has been declined on the basis of Third Division rulings that if claimant has the exclusive right to specific work on a Monday-Friday basis, he also has the right to perform such work on a holiday, if it is performed at all; and the fact that there has been no violation of the currently effective working agreement.

OPINION OF BOARD: It is the claim of the Employees that Carrier violated the Agreement in that Claimant is the regular employe as is contemplated by the agreement and in the absence of an extra or unassigned employe who will otherwise not have worked forty hours that week, is the employe who is entitled to be called on the holiday in question in preference to any other clerk.

The following rules or portions thereof, are pertinent to this dispute:

Rule 38 — Overtime and Calls

"(f) Work on Unassigned Days — Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Decision No. 2 of the Forty-Hour Week Committee reads in part:

"* * * Where work is required to be performed on a holiday which is not a part of any assignment the regular employe shall be used * * *"

Petitioner asserts that Claimant performs the vast bulk of billing pulpwood cars during his regularly assigned Monday through Friday duties whereas the other employes of the office force at LaGrange, including the Yard Clerk who worked the holiday in preference to Claimant, perform only morning duties assigned to this position. Because Claimant performs the bulk of pulpwood billing, *supra*, Claimant is therefore the regular employe as contemplated by the above cited rules.

A review of the record in this case and upon consideration of the awards and arguments presented by the parties we find that there is no question that the Yard Clerk performed billing work, normally done by the Claimant, on February 22, 1966. The record further shows that the Yard Clerk and the Agent had been so assigned and did this work on Saturdays and on Holidays since 1961. See Award 14951.

There is no denial that the Yard Clerk and the Agent had performed all necessary clerical work, including pulpwood billing on Saturdays and Holidays prior to February 22, 1966. This is not nominal or assistance work as alleged by the Petitioner but is a part of the regular Saturday work assigned.

The record does not support Employee's position that by Claimant performing the bulk of the pulpwood billing said duties belonged to him exclusively and thus the sole employe entitled to perform it Holidays. On the contrary, the record shows in addition to the performance of said duties by the Yard Clerk and the Agent that these duties at various times were also performed by the bill clerk and cashier on a Monday-Friday basis.

The Board concludes that Claimant was not entitled to preference as "the regular employe" on February 22, 1966 and will deny the claim.

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 26th day of April 1968.