

Award No. 16879
Docket No. CL-17353

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood (GL-6350) that:

- (1) The Carrier violated and continues to violate the rules of the Clerks' Agreement of December 1, 1956, as amended, when, without conference or agreement, it arbitrarily and unilaterally established at Cedartown, Georgia, hours of service contrary to said rules thereof, and that, therefore,
- (2) Clerk R. F. Smith, whose assignment is from 5:00 P. M. to 2:00 A. M., Mondays through Fridays, rest days Saturday and Sunday, shall now be paid for all time worked from 12:00 Midnight to 2:00 A. M., and thereafter at penalty rates of pay of his assignment from Monday, October 3, 1966 and continuing thereafter until his hours of service are corrected in accordance with the rules of the Clerks' Agreement, and that
- (3) Clerk Ralph W. Aiken, whose assignment is from 4:00 A. M. to 1:00 P. M., Saturdays through Wednesdays, off days Thursday and Friday, shall now be paid for all time worked from 4:00 A. M. to 6:00 A. M., and prior to 4:00 A. M., should this occur, i.e., any time between 12:00 Midnight and 6:00 A. M., at penalty rates of pay of his assignment from Saturday, October 1, 1966 and continuing thereafter until his hours of service are corrected in accordance with the rules of the Clerks' Agreement, and that
- (4) Clerk P. R. McKelvey, whose assignment on Thursdays and Fridays is from 4:00 A. M. to 1:00 P. M.; on Saturdays and Sundays is from 5:00 P. M. to 2:00 A. M.; and on Mondays is from 10:00 A. M. to 7:00 P. M., shall now be paid for all time worked from 4:00 A. M. to 6:00 A. M., and thereafter at penalty rates of pay of his assignment from Thursday, October 6, 1966 and continuing thereafter for

each Thursday and Friday until his hours of service are corrected in accordance with the rules of the Clerks' Agreement; and for all time worked from 12:00 Midnight to 2:00 A. M., on Saturdays and Sundays and thereafter until 6:00 A. M., if any, from Saturday, October 1, 1966 and continuing thereafter until his hours of service are corrected in accordance with the rules of the Clerks' Agreement, and that

(5) The successor, or successors, in interest, if any, of the above named or referred to employe shall be paid in like manner as long as the violation continues, and that

(6) The records of the Carrier shall be checked jointly with the General Chairman to determine the extent of the amounts of compensation due each of the above named or referred to employes.

EMPLOYEES' STATEMENT OF FACTS: Just recently the System Committee learned of the violation of the hours of service provisions of the Clerks' Agreement insofar as same pertains to all of the above presently named employes. Same was verified in telephone conversation with Cedartown personnel on October 17 and 18, 1966.

As early as November 18, 1965, there had not been even a minor violation of Rule 29 - STARTING TIME OF POSITIONS at Cedartown, Georgia on any of the assignments as will be noted in second item under HOURS OF SERVICE on Bulletin under File 125-19-B, reading:

"SWING YARD CLERK"

and copy of which Bulletin is hereto attached and identified as Employees' Exhibit No. 1.

Apparently, the above violation occurred some time prior to or around September 19, 1966, as is evidenced by Bulletin dated and designated under Rule 125-19-B, copy of which is hereto attached and identified as Employees' Exhibit No. 2.

October 18, 1966, the General Chairman presented claim to Messrs. C. P. Shell, Assistant to Superintendent, Cedartown, Georgia and H. L. Bishop, Jr., Superintendent, Columbus, Georgia, in that he was never able to secure a definite answer from Carrier's Officer, Mr. J. L. Ferrell, as to the proper initial Officer to whom to file claims. Copy of this letter, substantially outlining our position, is hereto attached and identified as Employees' Exhibit No. 3. It contained also, references to Employees' Exhibits No. 1 and No. 2, which reported the Bulletins of September 18, 1965 and September 19, 1966, respectively.

October 21, 1966, Superintendent H. L. Bishop, Jr. replied to the General Chairman's letter of October 18, 1966 (Employees' Exhibit No. 3) with attachments Employees' Exhibits No. 1 and No. 2, and denied the claim. Copy of Mr. Bishop's letter is hereto attached and identified as Employees' Exhibit No. 4.

November 11, 1966, the General Chairman appealed the claim to Vice President-Operations H. W. Waters, the next higher Officer of the Carrier designated by it to handle claims and grievances arising under our Agree-

As train operations changed, it was necessary to rearrange the hours of the Day Clerk and the hours of the Night Clerk to suit operational needs. Cars had to be switched and trains made up to suit the needs of the service, therefore, the hours of assignment of the Day Clerk and Night Clerk were changed as per Rule 17, Changing Assigned Starting Time, of the Clerks' Agreement.

THE CLAIM

In the claim presented on October 18, 1966, by the Brotherhood's General Chairman to Superintendent H. L. Bishop, Jr., Columbus, Georgia, the officer of Carrier authorized to receive claims as per Rule 25, Time Limits, of the Clerks' Agreement, it was alleged that Rules 29, 35, 23, 58 and 59 were violated. In subsequent correspondence, the General Chairman relied solely upon Rule 29, Starting Time of Positions, in an attempt to support the claim.

For the convenience of the Board, Rule 29 in the current agreement of December 1, 1956, is reproduced below:

"RULE 29.

STARTING TIME OF POSITIONS

(a) Where three (3) 8-hour shifts are worked in continuous service, the time for the first shift to begin work will be between 6:00 A. M., and 8:00 A. M.; the second shift, 2:00 P. M., and 4:00 P. M.; and the third shift 10:00 P. M., and 12:00 Midnight. In no event may the starting or ending time of any assignment be between the hours of 12:00 Midnight and 6:00 A. M.

(b) Exceptions to the foregoing may be made in special cases by mutual written agreement between the employing officer and the General Chairman."

This is the same language as will be found in Rule 47, Starting Time of Positions, of the Clerks' Agreement effective September 1, 1944. Thus the "Starting Time of Positions" rule has remained the same for over 22 years.

Correspondence pertaining to the claim is hereto attached as Carrier's Exhibits 1 through 7.

The rules and working conditions agreement is effective December 1, 1956, as amended, and copy is on file with your Board. The Brotherhood has failed in all handlings on the property to cite any rule violation whatsoever of the schedule agreement. Not knowing of any rule, interpretation or practice that has been violated, the Carrier has denied this baseless and factually erroneous claim in its entirety in all handlings on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant case Cedartown, Georgia, had three Clerk employes working separate assignments in October, 1966. Clerk Smith was assigned to work 4:00 P. M. to 1:00 A. M., Monday through Friday, with Saturday and Sunday as rest days. Clerk Aiken was assigned to work 3:00 A. M. to 12 noon, Saturday through Wednesday, with Thursday and Friday as rest days. Relief Clerk McKelvey was assigned to relieve Aiken on Thursdays and Fridays and Smith on Saturdays and Sundays and is assigned from 10:00 A. M. to 7:00 P. M. on Mondays.

The Organization contends that the starting and ending of the work assignments of Clerks Smith, Aiken and McKelvey between the hours of 12:00 midnight and 6:00 A. M. is a violation of the Agreement. The Organization's main contention being the violation of Rule 29(a) **Starting Time of Positions**, more particularly the last sentence of said paragraph.

"RULE 29.

STARTING TIME OF POSITIONS

(a) Where three (3) 8-hour shifts are worked in continuous service, the time for the first shift to begin work will be between 6:00 A. M., and 8:00 A. M.; the second shift, 2:00 P. M., and 4:00 P. M.; and the third shift 10:00 P. M. and 12:00 Midnight. **In no event may the starting or ending time of any assignment be between the hours of 12:00 Midnight and 6:00 A. M. (Emphasis ours.)**

(b) Exceptions to the foregoing may be made in special cases by mutual written agreement between the employing officer and the General Chairman."

That violation of Rule 29(a) in turn violates Rules 35, 23, 58 and 59 of the Agreement.

The Carrier contends that the last sentence of Rule 29(a) applies only to where there are three (3) 8-hour shifts worked in continuous service. Carrier further shows that as far back as 1956 the Cedartown, Georgia, location has had assignments—beginning and ending between 12:00 midnight and 6:00 A. M. when working two shifts. Carrier further contends that the Organization has also historically interpreted and practiced the last sentence in Rule 29(a) to only apply to situations where three (3) 8-hour shifts were worked in continuous service at a location.

There has been no contention made that Cedartown, Georgia, was a location where three (3) 8-hour shifts were worked in continuous service.

It appears clear to the Board, in this instance, that the last sentence of paragraph (a) of Rule 29, which restricts the starting and ending time of assignments, pertains only to the situation where three (3) 8-hour shifts are worked in continuous service as set out in the preceding sentence in the paragraph.

Employees' Exhibit 15 (Carrier's Exhibit 7) is a letter dated May 12, 1967, from Carrier's Director of Personnel to the Organization's General Chairman which in part reads, and the Board quotes:

* * * * *

In the April 18, 1967 conference, you were shown a number of bulletins advertising new positions or vacancies at points where one or two shifts were employed, wherein the hours of service either began or ended during period 12:00 Midnight and 6:00 A. M. You were furnished copies at the times the bulletins were issued, and you admitted receiving them. You then conceded that this had been the interpreta-

tion and practice both before and ever since the December 1, 1956 agreement was signed, * * *."

This statement was not denied or refuted at any time by the Organization. This shows that both parties have so accepted the above interpretation, both prior to and after the Agreement was effective.

In view of the above facts, the Board finds that there has been no violation of the Agreement and the claim should be denied.

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 24th day of January, 1969.