

Award Number 17345

Docket Number CL-17805

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6466), that:

- (1) Carrier violated the Clerks' Agreement at Miller Yard, Dallas, Texas, July 4, 1966, when it failed to use Mrs. Margarette E. Wiley for work normally performed by her as a part of her assigned duties during her regular assigned hours and necessarily required on that day.
- (2) Margarette E. Wiley be compensated a minimum of eight (8) hours at the time and one-half rate of \$22.00, in addition to that already paid to her for July 4, 1966.

EMPLOYEES' STATEMENT OF FACTS: Miller Yard at Dallas, Texas, is one of the larger freight terminals operated by the Carrier. It is a jointly operated SSW-SP (T&L) facility with the St. Louis Southwestern Railway Company as the operating Carrier, and the operations thereof are carried on seven days a week around the clock. The Mechanical Department, wherein Claimant worked at the time the claim arose, consists of a Mechanical Foreman, Mr. C. E. Bynum, a Steno-Clerk, Mrs. Margarette E. Wiley (Claimant), sixteen or more Carmen (Car Inspectors) and one or more laborers. Mechanical Foreman C. E. Bynum and his Steno-Clerk Margarette E. Wiley are the only employees of that department who devote their time to work in the Mechanical Department Office. The others devote their time working at various locations in the sprawling complex of tracks, outside the confines of the office. None of the Mechanical Department employees at Dallas are within and under the Scope of the Clerks' Agreement except Claimant, whose Steno-Clerk position is a fully covered position under that Agreement.

Claimant's assignment as Steno-Clerk is 8:00 A.M.-to 5:00 P.M., meal period 12:00 Noon to 1:00 P.M., Monday through Friday, with Saturday and Sunday rest days, and the bulletined duties, as per former Superintendent Mechanical Department, Mr. T. W. Bellhouse's Advertisement Bulletin No. 7 of December 24, 1963, are as follows:

August 17, 1966, claim was filed in favor of Mrs. Wiley for eight hours' pay at time and one-half rate alleging that Mechanical Foreman C. E. Bynum performed approximately two and one-half hours of clerical work on July 4 which is normally performed by claimant on Mondays, as follows (Exhibit No. 2):

"Signing the Carmen's time cards and mailing to Tyler, Texas.

Overtime report for July 1st had been compiled and reported to and mailed to Pine Bluff, Ark.

2599 Report had been filed.

List of car number and initial of cars on Billing Repair Cards had been compiled and delivered to Chief Clerk, Mr. Cave, at Miller."

In letter February 8, 1967 (Exhibit No. 3) appealing the claim, the Employes changed the description of work as follows:

"Checking and signing the Carmens' time cards and mailing to Tyler, Texas.

Preparing and typing Overtime Report for July 1st, reporting and mailing to Pine Bluff, Arkansas.

Filing 2599 Report.

Preparing a list of initials and Car Numbers on Bad Order cars and delivering to Chief Yard Clerk L. M. Cave at the Yard Office for checking."

The claim was denied.

Exhibits 1 to 3, inclusive, are attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective April 1, 1946 (reprinted January 1, 1963) as amended by Supplemental Agreement dated July 22, 1949, and Memorandum of Agreement dated August 5, 1950, relating to the Forty Hour Week, copies of which are on file with the Board.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, a Steno-Clerk in Carrier's Mechanical Department (which consisted of a Mechanical Foreman, who with Claimant worked in the office, and sixteen (16) or more Carmen and one or more laborers who worked in the yard), was advised by her Mechanical Foreman on Friday, July 1, 1966, that her Steno-Clerk position would not be worked on Monday, July 4, 1966, one of the existing Agreement's recognized holidays.

Claimant alleges that upon her return to service on Tuesday, July 5, she found that some two and one-half hours of her clerical work had been performed by the Mechanical Foreman. Claimant further alleges that since Carmen generally worked all holidays, she had in the past been used for holiday work.

Carrier denies that the Mechanical Foreman performed but a little over an hour of the work claimed, and that that amount was work incidental to the Mechanical Foreman's position and not exclusively that of the Claimant.

The advertised bulletin under which Claimant bid and received her job reads as follows:

"BULLETIN NO. 7

Notice to all Clerks—Consolidated Seniority Roster

Bids in writing will be received by the undersigned for position of Steno-Clerk in Mechanical Department at Dallas, Texas, for a period of seven (7) days from date of 5:00 P.M. December 31, 1963. The duties of this position are such that successful applicant must be a qualified typist, capable of taking dictation in long hand or on typewriter at a reasonable rate of speed. Handle correspondence, prepare statements and reports that are required by StLSW and T&L Lines and maintain all records pertaining to joint operation of mechanical facilities. The rate of pay is \$19.84 per day. The assigned working hours are 7:00 A.M. to 4:00 P.M. with meal period 12 noon to 1:00 P.M. with Saturday and Sunday the assigned rest days.

Position advertised account NEW.

NOTE: In accordance with Bulletin Rule 10, the brief description of duties shown for the above position sets forth only the general duties thereof and is not to be considered as an all-inclusive description of duties."

Other controlling provisions are:

"AGREEMENT RULE 32-8:

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 employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"Decision No. 2 of the Forty Hour Week Committee, which reads in part:

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

Since the parties do not contest the fact that the Mechanical Foreman did some of Claimant's Steno-Clerk work, except as to the exact amount, this Board is left to decide merely whether the work performed on this holiday by the Mechanical Foreman was incidental to his duties or whether in fact his performance of this work constituted a violation of the existing Agreement.

A careful review of the record, the Agreement, and the briefs and awards relied on by both parties lead us to the conclusion that such work was not incidental to Mechanical Foreman's position, and consequently, his performance thereof violated the Agreement.

In so finding, we rely particularly on Award 8563, which reads in part:

"It is certainly true that the Carrier has the right to suspend work on holidays without violating the weekly guarantee rules. The real question, however, is whether a position may be blanked on a

holiday when some of the duties of that position must be performed on that holiday. In our opinion, that question must be resolved in the negative."

Although in the above case the work was done by another clerical employee, we think that the Mechanical Foreman's performance of such clerical work makes even a stronger case for the intant Claimant.

On finding that the work performed by the Mechanical Foreman was neither inconsequential nor work incidental to his own, we rely particularly on Awards 2043, 15375, and 15552. It is evident that a Mechanical Foreman's time is too valuable to be spent doing clerical work. Obviously that is one reason a Steno-Clerk was hired for this job. Bulletin No. 7, under which Claimant was hired, clearly establishes, both in the specific and the general, the kinds of work she was to do. The Agreement and Decision No. 2 of the Forty Hour Week Committee compel a finding that Claimant should have been given the opportunity to do this work on July 4, 1966.

This Board sustains the claim for payment to Claimant of that amount necessary to compensate her at the Agreement rate of time and one-half for the eight (8) hours she should have been given the opportunity to work on July 4, 1966.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1969.