



Award No. 17707
Docket No. CL-18064

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6510) that:

- 1) Carrier violated the Clerks' Rules Agreement at St. Paul, Minnesota on the Memorial Day Holiday, May 30, 1967, when it failed to call and use employe R. D. Wozniak for work he normally performs as a part of his regularly assigned duties during his regular assigned hours that was necessarily required and performed on that day.
- 2) Carrier shall now be required to compensate claimant Wozniak for eight (8) hours at the time and one-half rate of his Position No. 14160 in addition to the eight hours holiday pay granted for May 30, 1967.

EMPLOYEES' STATEMENT OF FACTS: Employe R. D. Wozniak, who has a clerical seniority date of June 30, 1960 in Seniority District No. 28, is the regularly assigned occupant of Yard Clerk Position No. 14160 at St. Paul, Minnesota. Position 14160 is a 5-day position with hours and days of assignment from 3:59 P.M. to 11:59 P.M., Monday through Friday with Saturday and Sunday rest days.

The duties of Yard Clerk Position No. 14160 include making up Duluth Train 626 and I&M Train 764 which entails checking of the cars that are pulled to make up the trains, pull waybills and line them up in accordance with the check of the cars, run a train list and wheel report; after the trains depart, make a Fwd train tape that is sent to Chicago, Ill. and Austin, Minn.

The above work is regularly performed by claimant as a part of his assigned duties Monday through Friday of each week.

Employe B. W. Erickson, who has a seniority date of October 13, 1950 in Seniority District No. 28, is the regularly assigned occupant of Yard Clerk Position 14660 at St. Paul, Minn. His assigned hours and days of assignment are 3:59 P.M. to 11:59 P.M., Wednesday through Sunday, with Monday and Tuesday rest days.

rate of his regularly assigned Yard Clerk Position No. 1466 in accordance with the provisions of aforementioned Rule 35(b) and Rule 34(d) which reads in pertinent part as follows:

"Employes notified or called to perform work on Sunday or on one of the seven (7) holidays specified in Rule 35 (b) will be allowed five hours and twenty minutes (5'20") at the rate of time and one-half for four (4) hours' work or less. Employes worked in excess of four (4) hours will be allowed a minimum of eight (8) hours at the rate of time and one-half." (Emphasis ours)

On the holiday here involved, claimant Wozniak received 8 hours holiday pay at the straight time rate of his regularly assigned Yard Clerk Position No. 1416 in accordance with the provisions of the Holiday Pay Rule.

Attached hereto as Carrier's Exhibits are copies of the following:

Letter written by Mr. S. W. Amour, Vice President-Labor Relations to Mr. H. C. Hopper, General Chairman, under date of December 28, 1967Carrier's Exhibit "C"

Letter written by Mr. Amour to Mr. Hopper under date of June 27, 1968 Carrier's Exhibit "D"

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant, R. D. Wozniak, is the regularly assigned occupant of Yard Clerk Position No. 14160 at St. Paul, Minnesota. The duties of Yard Clerk Position No. 14160 include making up the Duluth Train 626 and I & M Train 764. This work is performed by Claimant, Wozniak, as a part of his assigned duties Monday through Friday of each week. On Tuesday, May 30, 1967, (Memorial Day) Duluth Train 626 and I & M Train 764 were scheduled to run and did run as usual.

Memorial Day was a holiday for Claimant and in lieu of using Claimant on that day to perform the work in connection with Duluth Train 626 and I & M Train 764, the Carrier used employe B. W. Erickson, who is the regularly assigned occupant of Relief Position No. 6, the consist of which includes relieving Yard Clerk Position 1466 on Monday and Tuesday.

It is the Carrier's contention that the duties of Yard Clerk Position No. 1466 and that of Yard Clerk Position No. 14160, as set out in the bulletins, are the same and that Carrier has a right, under the relevant provisions of the agreement, to assign Erickson to the duties in question.

At the outset, Carrier takes issue with the reliability of that part of the Organization's evidence consisting of statements of employes Wozniak and Erickson concerning the dissimilarities of the duties they performed. Carrier charges that those statements are self-serving and not sworn to and should be ignored. We resolve this evidentiary issue in favor of the employes.

First, these statements contain assertions that are equally within the knowledge of the employes and the management's personnel and could have been easily controverted by counter-statements or affidavits, but were not. Second, the statement of the employe Erickson would seem to be against his own future economic interest and there seems to be no reason to doubt the truth of the matter asserted even in the absence of the form of affidavit.

Having determine that Claimant had, on a somewhat permanent basis, performed the duties in question immediately prior to the Memorial Day

holiday, we now come to the question of whether he was entitled to perform these duties on that holiday.

The question is not whether the Claimant has the exclusive right to perform the duties in question. The question is whether, having been assigned certain duties, he has the right to perform them if they are required to be performed on a holiday.

The citations offered by Carrier deal more with a scope rule question than what we are concerned with here. The decision resolves itself down to deciding the parties' respective rights and obligations under Section 32 (f) which provides:

"In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35 (b), (if such holiday falls within the Employee's work week) the employe regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employe who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work."

A "position" as referred in the foregoing section consists of, among other things, a group of tasks to be performed. If two employes perform tasks which come from a common source and are undefinable and interchangeable then it may be said that each employe's "position" is the same with regard to the tasks performed and any given task may be performed by either.

That is not the case in the matter at hand. The specific task of making up the Duluth Train 626 and I & M Train 764 was being performed by Claimant on a more or less permanent basis at the direction of the management personnel. This task was, therefore, a part of his "position" and, therefore, he had a right to perform it on the holiday pursuant to the terms of Section 32(f).

The description of the tasks required to be performed or job title as set out in the bulletin which lists the job is less controlling as to what a "position" consists of than is the actual task performed.

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 Carrier violated the Agreement.

A W A R D

Claim is sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schuly
Executive Secretary**

Dated at Chicago, Illinois, this 13th day of February 1970.