



Award Number 17844

Docket Number CL-18372

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

**MISSOURI PACIFIC RAILROAD COMPANY
(GULF DISTRICT)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6613) that:

1. Carrier violated and continues to violate the Clerks' Agreement when effective Monday, March 11, 1968, at Tyler, Texas, it refused to permit Clerk R. L. Westbrook to perform his regularly assigned duties on his regular assigned rest day and had those duties performed by another employe not covered by the Clerks' Agreement.
2. Carrier shall be required to compensate Clerk R. L. Westbrook eight (8) hours at straight time rate of pay beginning Monday, March 11, 1968, and to continue each Monday thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS:

1. The Carrier for many, many years has maintained an Agency at Tyler, Texas, and over this many years, the clerical force has been sizeable. In 1924 the clerical force consisted of a Chief Clerk, Cashier and two (2) Car Clerks. (See Employees' Exhibit No. 1) It should be noted that in 1924, Tyler, Texas, was in Seniority District No. 29 and later became part of Seniority District No. 24.

2. Duties assigned to one Car Clerk position six (6) days per week was, Render 6793 T, interchange, switching settlement and per diem reclaim reports, handle switch list, in and outbound train records, maintain seal, demurrage and station records. (Employees' Exhibit No. 2)

3. The Car Clerk position mentioned above (paragraph 2) remained in existence as a six (6) day per week position until, through negotiations, the Clerks' Organization secured the 40 hour work week, effective September 1, 1949.

4. August 25, 1949, the Carrier issued bulletins covering all stations and offices in Seniority Districts 19, 24 and 25, that effective September 1, 1949 all clerical positions would be reduced to five (5) days per week with Saturdays and Sundays as rest days. Quite a number of exceptions were made

OPINION OF BOARD: At the time the dispute herein arose, Claimant was the regularly assigned occupant of Utility Clerk position at Tyler, Texas, with assigned hours 6:00 A.M. to 3:00 P.M., and a work week of Tuesday through Saturday, rest days Sunday and Monday. The position is not filled on rest days. The station force at Tyler consisted of a Star Agent-Telegrapher, covered by the Telegraphers' Agreement, and three clerical positions covered by the Clerks' Agreement.

The claim alleges a violation of the Agreement because the Agent performed on Mondays certain clerical work performed by the Claimant Tuesday through Saturday. The Carrier describes the clerical work performed by the Agent on Mondays as preparation of switch list for traveling switch engine, making inbound switch list for the local freight crew, preparation of interchange report for delivery and receipt of cars with the Cotton Belt Railway, and on occasions posting demurrage records. The Carrier contends that the work was performed by the Agent incidental to his position as Agent in charge of the station, and was in keeping with Memorandum of Agreement effective November 1, 1940, which provides in part:

"Where an Agent covered by an agreement other than the Clerks' Agreement is the only employe on duty not covered by the Clerks' Agreement the Carrier may assign such Agent any work covered by the Clerks' Agreement."

The Petitioner alleges a violation of Rule 37 (c-6), "Work on Unassigned Days," and contends that as the work is performed by the Claimant on his regular work days, Tuesdays through Saturdays, the Claimant had a right under the rule to perform the work on Mondays in the absence of an available extra or unassigned employe who otherwise would not have forty hours of work that week.

Rule 37 (c-6) is a specific rule covering work on unassigned days and is applicable in our present dispute. The Claimant was "the regular employe" under Rule 37 (c-6). There is no showing in the record that the Agent performed the work complained of on other days of his assignment. The Memorandum of Agreement of November 1, 1940, is a general rule which would have application where the conditions referred to regularly exist. It does not apply to a situation such as here, where the work is regularly done by Claimant on the work days of his assignment. (Award 3761.)

In its submission to this Board the Carrier contends that the claim is excessive in claiming eight hours. We do not find that this issue was raised on the property, and it is well settled that new issues may not be raised for the first time before the Board.

The claim will be sustained.

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 violated.

A W A R D

Claim sustained.

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

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

Dated at Chicago, Illinois, this 30th day of April, 1970.