



Award No. 17969

Docket No. CL-18371

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6656) that:

- (1) Carrier violated the rules of the current Clerks' Agreement, which became effective July 1, 1963, by having the Roundhouse Foreman at Laurel, Montana, perform the clerical work on Saturdays and Sundays that is performed exclusively by Steno-Clerk Fred Starbard from Monday through Friday, commencing with Saturday, March 11, 1967.
- (2) Carrier shall now compensate Fred Starbard, Steno-Clerk, Laurel, Montana, eight hours at time and one-half rate on Saturday, March 11, 1967, and Sunday, March 12, 1967, and subsequent Saturdays and Sundays.

EMPLOYEES' STATEMENT OF FACTS: There is one clerical position maintained in the Roundhouse at Laurel, Montana. This clerical position is classified as Steno-Clerk and is assigned to work from 7:00 A.M. to 3:00 P.M., Monday through Friday. Fred Starbard is assigned to the position of Steno-Clerk.

The principal work assigned to the position of Steno-Clerk consists of:

- Answering telephones
- Transferring the names from the Enginemen's register to the crew book and crew board
- Accepting tie-ups from the working supervisor and placing them in the record book
- Preparing fuel report and entering amounts in fuel book
- Dividing CB&Q fuel into different engine groups on a prescribed form
- Removing Enginemen's timeslips and delay reports from a receptacle
- Sorting delay reports and delivering copies to appropriate officers
- Grouping Enginemen's timeslips according to class of service
- Checking timeslips for overtime or questionable items
- Preparing prescribed forms for Master Mechanic
- Issuing Shopmen's timeslips
- Posting Shopmen's timeslips on a prescribed form
- Preparing change of occupation forms and daily report of overtime forms
- Informing caller of crews to call

On June 8, 1967, Division Chairman Harper submitted claim on behalf of Mr. Starbard for eight hours at punitive rate for Saturday and Sunday, February 11 and 12, 1967, and every Saturday and Sunday thereafter until alleged violation corrected. This claim was revised by Division Chairman Harper on June 12, 1967 to read, " * * * (commencing) March 11 and 12, 1967 * * *."

On June 13, 1967, Superintendent Anderson declined this claim as not sustained by schedule rule or agreement and account many of the Saturdays and Sundays included in the claim were in violation of Time Limit on Claims Rule.

On July 6, 1967, BRAC General Chairman Whelan appealed Superintendent Anderson's declination to General Manager King, who declined the appeal as not being supported by schedule rule.

The claim was then appealed by General Chairman Whelan to the Assistant Vice President-Labor Relations, the highest officer designated to receive claims, who declined the claim on August 11, 1967. The declination by the Assistant Vice President-Labor Relations stated:

"The roundhouse foreman and assistant roundhouse foreman are not performing the work on Saturdays and Sundays that is performed exclusively by Mr. Starbard from Monday through Friday so as to bring into play the application of Rule 29(j) of the Clerks' Agreement."

The Assistant Vice President-Labor Relations also called attention to the fact that work performed exclusively by Mr. Starbard from Monday through Friday is completely dispensed with on Saturdays and Sundays.

The BRAC General Chairman declined the decision and subsequently conferences were scheduled and held, during which the Carrier maintained BRAC employees have not established exclusive right to work performed by the roundhouse foreman on Saturdays and Sundays.

Agreement could not be reached between the BRAC and the Carrier in disposition of this claim.

Enclosed as Carrier's Exhibit "A" is all correspondence concerning the handling of this claim on the property with the exception of certain correspondence agreeing to time extensions.

(Exhibits Not Reproduced)

OPINION OF BOARD: The record shows that there is one clerical position classified as steno-clerk in Carrier's roundhouse at Laurel, Montana, assigned to work 7:00 A.M. to 3:00 P.M., Monday through Friday. The Claimant is assigned to that position.

Prior to March 9, 1967, the steno-clerk position was filled seven days a week. Effective March 9, 1967, the assignment was changed to Monday through Friday, with Saturday and Sunday as rest days, and with no relief on the rest days.

The claim alleges a violation of Rule 29(j) of the Agreement on the ground that the Roundhouse Foreman performs clerical work on Saturdays and Sundays which is performed solely by Claimant Monday through Friday. Rule 29(j) reads:

"(j) Work on Unassigned Days: Where work is required by the Railway Company to be performed on a day which is not a part of any assign-

ment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

In the handling of the dispute on the property the Carrier's highest officer denied the claim on August 11, 1967, as follows:

"The roundhouse foreman and assistant roundhouse foreman are not performing the work on Saturdays and Sundays that is performed exclusively by Mr. Starbard from Monday through Friday so as to bring into play the application of Rule 29(j) of the Clerks' Agreement. Work performed exclusively by Mr. Starbard from Monday through Friday is completely dispensed with on Saturdays and Sundays."

The General Chairman advised that he desired to make further investigation of the work performed on Saturdays and Sundays, and on January 24, 1969, he wrote the Carrier in part:

"I have now completed my further investigation.

"Mr. Starbard in his letter of October 16, 1967 sets forth in detail the work performed exclusively by him from Monday through Friday. We are in accord with the facts set forth in Mr. Starbard's letter.

"On Saturdays and Sundays the Roundhouse Foreman performs the following work at Laurel:

Answers the telephone in connection with clerical work.

Keeps up the crew book according to crews' rest time, etc.

Puts out the shopmen's timeslips and sorts them according to days off, etc.

Collects the enginemen's timeslips and transmits them to the Manager, Disbursement Accounting.

Keeps up the CB&Q utilization report.

Takes engine lineups from either the control center or the Chief Dispatcher.

Accepts calls on various trains from the yard office.

"The foregoing tabulation of the work performed by the Roundhouse Foreman on Saturdays and Sundays is performed exclusively by Mr. Starbard from Monday through Friday."

The record does not show that any response was made to the General Chairman's letter of January 24, 1969.

In its submission to this Board the Carrier contends that the duties listed in the General Chairman's letter of January 24, 1969, are not performed exclusively by the Claimant from Monday through Friday. However, as indicated, the statement of the General Chairman following his investigation, and as contained in his letter of January 24, 1969, was not challenged in the handling of the dispute on the property. The Carrier also contends that in order to prevail the Petitioner should have presented evidence to indicate a system-wide contractual right to the work performed on Saturdays and Sunday at Laurel.

Under Rule 29 (j) where work is required on a day which is not a part of any assignment, in the absence of an available extra or unassigned employee who will otherwise not have forty hours of work that week, the work belongs to the regular employee. Based upon the record of the dispute as handled on the property, the Board concludes that the Petitioner made a showing, which was not timely challenged, that the work complained of was performed by

the Claimant Monday through Friday, and that he had a right to perform the work on Saturdays and Sundays.

The parties are in agreement that the claim can only be considered from April 8, 1967, to May 11, 1968. It will be sustained for that period.

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 to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1970.

CARRIER MEMBERS' DISSENT TO AWARD 17969, DOCKET CL-18371 —Devine

We respectfully submit that this award is palpably erroneous in that it is based on conclusions which are contradicted by the record.

The conclusion on which the sustaining award is expressly predicated is that in handling on the property "Petitioner made a showing, which was not timely challenged, that the work complained of was performed by the Claimant Monday through Friday, and that he had a right to perform the work on Saturdays and Sundays." The foregoing conclusion is predicated solely on the equally erroneous conclusion that "the statement of the General Chairman following his investigation, and as contained in his letter of January 24, 1969, was not challenged in the handling of the dispute on the property."

The record establishes that prior to the date of the General Chairman's letter Carrier emphatically denied the allegations contained in that letter. The letter dated August 11, 1967, by which Carrier's highest officer denied the claim, states:

"The roundhouse foreman and assistant roundhouse foreman are not performing the work on Saturdays and Sundays that is performed exclusively by Mr. Starbard from Monday through Friday so as to bring into play the application of Rule 29 (j) (Unassigned Day Rule from the Forty Hour Week Agreement) of the Clerks' Agreement. Work performed exclusively by Mr. Starbard from Monday through Friday is completely dispensed with on Saturdays and Sundays." (Emphasis added.)

Under date of October 16, 1967, Petitioner obtained a letter from Claimant addressed to the Division Chairman, in which Claimant does nothing more than list the various functions that he performs Monday through Friday. The only feature of the letter that is significant for purposes of deciding this case is that it contains no statement, either express or implied, that any of the functions listed in the letter were performed exclusively by the Claimant Monday through Friday or that the roundhouse foreman did not perform functions of the type involved in this claim Monday through Friday. Thus, although the letter was written after the issue of exclusive performance Monday through Friday was clearly understood by Petitioner, the letter of Claimant completely avoids that issue and contains nothing but a simple recital of duties that Claimant himself performs Monday through Friday. The record further shows that after receipt of this letter from Claimant, Petitioner's General Chairman repeatedly wrote Carrier requesting extensions of time for the alleged reason that "all the facts in support of this claim have not as yet been developed".

After months of attempting to develop additional evidence, the General Chairman wrote Carrier's highest officer under date of January 24, 1969, and relied solely on Claimant's letter of October 16, 1967, as a basis for contending that the involved work is "performed exclusively by him (Claimant) from Monday through Friday".

Certainly Claimant's letter of October 16, 1967, does not allege facts that are sufficient to support the claim. As we have noted, it does not assert exclusive past performance of the involved work by Claimant. Furthermore, the General Chairman recognized this fact by repeatedly requesting extensions of time in order that he could "develop additional information" because all of the "facts in support of the claim" had not been developed.

The record is thus clear on the point that Petitioner was unable to get any evidence. The General Chairman's letter of January 24, 1969, attempts to supply the evidence. In this letter it is asserted repeatedly that the work is performed "exclusively" by Claimant Monday through Friday. It is well settled that this Board will not accept assertions of a Claimant's representative as a substitute for probative evidence, and Carrier was under no obligation to repeat its emphatic denials of such assertions which were contained in its letter disallowing the claim. Awards 16832, 17833 (Devine).

We dissent.

/s/ G. L. NAYLOR

/s/ R. E. BLACK

/s/ W. B. JONES

/s/ P. C. CARTER

/s/ G. C. WHITE