



Award No. 18549

Docket No. CL-18726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

**BURLINGTON NORTHERN INC.
(NORTHERN PACIFIC RAILWAY COMPANY)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6766) that:

1. Carrier violated the rules of the current Clerks' Agreement, effective July 1, 1963, by having a telegrapher prepare Form F-15 and Form F-50 at Bismarck, North Dakota, on Saturday, March 29, 1969, and subsequent Saturdays.

2. Carrier shall now compensate W. E. Bitz, Car Clerk, Bismarck, North Dakota, and his successors, if any, two hours at time and one-half rate on March 29, 1969 and subsequent Saturdays until the practice of having a telegrapher prepare Form F-15 and Form F-50 on Saturdays is discontinued.

EMPLOYEES' STATEMENT OF FACTS: Bismarck and Mandan, North Dakota, are adjacent to each other on opposite sides of the Missouri River.

The Northern Pacific Railway and the Soo Line Railway operate into Bismarck and cars are interchanged between these two Carriers at this station.

Yard engines are not stationed at Bismarck by the Northern Pacific Railway. However, yard engines are stationed at Mandan.

A yard assignment locally termed the Bismarck switch assignment is operated out of Mandan into Bismarck, six days per week from Monday through Saturday. This switch assignment performs switching service in Bismarck, removing and spotting cars at industries and interchanging cars between the Northern Pacific Railway and the Soo Line Railway.

W. E. Bitz is assigned to a position of Car Clerk at Bismarck, working from 5:30 A. M. to 2:30 P. M., Monday through Friday. The position of Car Clerk is not filled on rest days (Saturdays and Sundays).

The F-50 report (of which the F-13 and F-26 is a part) has lessened to the point that preparation is now required about once every three months and requires three to four minutes to prepare. The F-15 report, when required, takes about five or six minutes to prepare.

BACKGROUND OF THE CASE: On April 19, 1969 the Division Chairman wrote to Superintendent, Fargo Division, presenting a claim in behalf of W. E. Bitz, car clerk, and/or his successors at Bismarck, North Dakota, for payment of two hours at time and one-half rate on March 29, April 5, 12 and 19, 1969 and all subsequent dates, alleging Carrier violated the rules of the Clerks Agreement by having employees who are not members of the Clerks' Organization perform work in connection with handling interchange with Soo Line Railway at Bismarck, North Dakota. On June 5, 1969 the Fargo Division Superintendent wrote the Division Chairman declining this claim.

On July 1, 1969 the General Chairman of the BRAC appealed to General Manager D. H. King the claim presented in behalf of Mr. Bitz. On July 25, 1969 the appealed claim was declined by General Manager D. H. King.

On July 29, 1969 the General Chairman of the BRAC appealed to the office of Assistant Vice President-Labor Relations the claim presented on behalf of Mr. Bitz. On July 31, 1969 the appealed claim was declined and subsequently conferences were scheduled and held. Copies of the correspondence are attached as Carrier's Exhibit "A."

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that Claimant is assigned to the position of Car Clerk at Bismarck, North Dakota, working Monday through Friday, with Saturday and Sunday as his assigned rest days. The position is not filed on rest days. Claimant complies Forms F-15 and F-50 as part of his regular tour of duty Monday through Friday, and prior to March 29, 1969, for a period of at least two years, Carrier has required the Clerk at Bismarck to report each Saturday to perform this work.

Commencing with Saturday, March 29, 1969, the practice of calling Claimant was discontinued and the work has been turned over to the Telegraph-Operator on Saturdays.

The Claim alleges a violation of Rule 29(j) of the Agreement on the ground that the Telegraph-Operator performs clerical work on Saturdays which work is part of Claimant's regular assignment 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 assignment, 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."

Since Saturday is an unassigned day, and there is no available extra or unassigned employee, the Organization believes Claimant, the regular employee, is entitled to this work.

In a recent Award, 17969, involving the same parties and the identical issue presented by this claim, the Board held:

"Under Rule 29(j) where work is required on a day which is not part of any assignment, in the absence of an available extra or unassigned employe * * * the work belongs to the regular employe. 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."

In Award 17969, as in the case at bar, Carrier contended that in order to prevail the Petitioner should have presented evidence to indicate a system-wide contractual right to the work in question. The issue is, however, not one of exclusivity of work, but rather the application of Rule 29(j).

We find Award 17969 not palpably in error. The sound reasoning enunciated there is applicable to the claim before us.

Therefore, 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.