

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19322
Docket Number CL-18256

Gene T. Ritter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Northern Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6596)
that:

(1) Carrier violated the rules of the current Clerks' Agreement, which became effective July 1, 1963, by having a Telegrapher perform the work of billing commercial freight shipments outside the assigned hours of the occupant of the position of General Clerk at Sidney, Montana, on various workdays, Monday through Friday, and on each Saturday, commencing with Saturday, June 17, 1967.

(2) Carrier shall now compensate J. T. Yadon, General Clerk, Sidney, Montana, for four hours at time and one-half on each workday from Monday through Friday that a Telegrapher performed the work of billing commercial freight shipments outside the assigned hours of the occupant of the position of General Clerk, subsequent to June 17, 1967.

(3) Carrier shall now compensate J. T. Yadon, General Clerk, Sidney, Montana, four hours at time and one-half rate on Saturday, June 17, 1967, and each Saturday thereafter until the practice of having a Telegrapher bill commercial freight shipments on Saturdays is discontinued.

OPINION OF BOARD: Claimant is classified as General Clerk and is assigned work from 8:00 A.M. to 5:00 P.M., Monday through Friday. Effective February 20, 1967, the two Telegrapher positions worked on staggered assignments. One Telegrapher worked 7:00 A.M. to 3:00 P.M., Tuesday through Saturday; the other Telegrapher worked 7:00 A.M., to 3:00 P.M., on Monday, and 12:00 Noon to 8:00 P.M., Tuesday through Friday. Commencing June 17, 1967, a Telegrapher performed the work of billing commercial freight shipments after 5:00 P.M. on work days when necessary and on Saturdays. The Organization relies on Rule 29 (j) which is known as the Work On Unassigned Days Rule. This rule is:

"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 40 hours of work that week; in all other cases by the regular employee."

The Organization further contends that the involved work is work that is normally performed by members of the Clerks' Organization and that the Carrier is obligated to use the Claimant on an overtime basis for the involved work. Carrier denies that the involved work belongs exclusively to members of the Clerks' Organization. Carrier also contends it has always been the practice on this property that a Telegrapher may be assigned clerical work in an amount sufficient to fill out his tour of duty when not occupied with telegraphy.

In this case, the claim concerns itself with the billing of commercial freight shipments at Sidney. The record bears out the fact that Claimant has performed commercial freight shipment billing exclusively at the involved point. It might be true that Telegraphers have billed coal shipments out of a coal mine at Cecil, Montana, a station 14 miles away; however, this does not constitute the normal duty of billing commercial freight shipments at the involved point. This case comes within the purview of Rule 29(j), commonly known as the "Work On Unassigned Days Rule". This Referee has said many times that the burden of proof, in a case of this nature, requires that the Organization prove two items: The Organization must prove the complained of work was normally performed by the Claimant during his normal work week and that the Employee performing such work on Claimant's unassigned day, does not normally perform this work during his normal work week. In this instance, the Organization has sustained its burden of proving those two items. This 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 Employee involved in this dispute are respectively Carrier and Employee 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:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1972.

CARRIER MEMBERS' DISSENT TO AWARD 19322, DOCKET CL-18256

(Referee Ritter)

The ruling that this "case comes within the purview of Rule 29 (j)" (Work on Unassigned Days) is arbitrary insofar as it relates to part 2 of the claim; for that part of the claim refers solely to work on assigned days, and the Unassigned Day Rule explicitly limits its application to work on unassigned days. Petitioner has not even contended that the Unassigned Day Rule supports this part of the claim. Rather, Petitioner has cited the rules of the agreement applicable to overtime and calls and has argued that:

"It is the established practice on this property to permit an employee occupying a position to follow the overtime work flowing from such position. This practice is pursued on a system-wide basis, and by virtue of its deeply entrenched application is just as binding upon the Carrier as a written rule. See Award No. 15414 of this Division."

Petitioner failed to support this past practice argument with proof, but instead of properly denying part 2 of the claim, the Referee has sustained the entire claim on the premise that the Unassigned Day Rule was violated.

The ruling that the Unassigned Day Rule was violated is also arbitrary in that the fact which is asserted as a basis for the ruling is contrary to the admitted facts of record. The ruling reads:

". . . The Organization must prove the complained of work was normally performed by the Claimant during his normal work week and that the Employee performing such work on Claimant's unassigned day, does not normally perform this work during his normal work week. In this instance, the Organization has sustained its burden of proving those two items. . . ."

The record discloses that Carrier has consistently contended this was regularly assigned work of the Telegrapher during his regular work week, and Petitioner agreed with that contention unqualifiedly. Petitioner's submission contains the following admission:

"Commencing with June 17, 1967, a Telegrapher performed the work of billing commercial freight shipments after 5:00 P.M. on workdays when necessary and on Saturdays."

We respectfully submit that the award has no foundation in reason and fact, and we dissent.

W. F. Taylor

P. C. Carter

W. M. Brinkwood