

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19471
Docket Number CL-18055

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6504)
that:

1. Carrier violated the rules of the Clerks' Agreement when it held R. W. Swartz, regular assigned Yard Clerk at Niagara Falls, N.Y. off his regular Yard Clerk position on the holiday, January 2, 1967 and refused to permit him to perform his regular assigned duties on that day and had those duties performed by an employe not covered by the Clerks' Agreement.

2. Claimant Swartz shall now be compensated eight (8) hours pay at the punitive rate of his position for the holiday, January 2, 1967 in addition to eight (8) hours pro rata pay he received as holiday pay. (Claim No. 1869)

OPINION OF BOARD: Claimant, Yard Clerk at Niagara Falls, New York, occupied a 7 day position, 8:30 A.M. to 5:00 P.M., with assigned work week Monday through Friday, and relieved by a Relief Clerk on rest days, Saturday and Sunday. In the year 1967, January 1 fell on Sunday. Therefore, the New Year's Day holiday was proclaimed to be Monday, January 2, 1967. On December 30, 1966, Carrier notified Claimant and other clerical personnel in the Freight Office that their position would not work on the January 2, 1967 holiday and that they were not to report for work. On January 2, 1967, Carrier permitted the Operator-Clerk, who was not covered by the Clerks' Agreement, to perform certain clerical work on said holiday. Claimant contends that this work rightfully belonged to Claimant under the Agreement and further contends that the work performed on the holiday was work that has been exclusively performed by Yard Clerks at Niagara Falls, New York. Carrier alleges that the involved work has never, expressly or by implication, by way of past practice and custom on the property, been the exclusive work of Clerical employees and such functions have been historically performed by Operator-Clerks and others over the entire system of the railroad. Carrier further contends that a Telegrapher may perform Clerical work which is incidental and in proximity to his regular duties to the extent necessary to fill out an assignment.

The dispute in this case concerns itself with the "Work on Unassigned Day" Rule. The Organization, in this instance, has proved that Claimant did

perform the involved work during his **normal work week**. However, the **Organization** has failed to prove that the Operator-Clerk **did not** perform this work normally during the other four regularly assigned work days. Under authority of Awards 19403 and 19220 by this Referee, the Organization has failed in its burden of proof and this claim will be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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