

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20060
Docket Number CL-20130

Irving T. Bergman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Employees Union)
(
(The Akron, Canton & Youngstown Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-communication Division, BRAC, on the Akron, Canton & Youngstown Railroad Company, GL-7295, that:

1. Claim of the General Committee that the Carrier is improperly compensating John Clay for service on Sundays at Spencer, Ohio; and,
2. Carrier shall be required to compensate John Clay at the Agent's rate of pay at Spencer, Ohio, for each Sunday, beginning 60 days prior to the date of the original claim of May 3, 1971, or on March 3, 1971, under Rule 4 and related rules.

OPINION OF BOARD: The material facts are the following: Carrier maintains an Agent position at Spencer, Ohio, the assigned hours of which are 9:00 a.m. - 5:00 p.m., Monday through Friday with relief days on Saturday and Sunday. The Agent's duties are divided between Spencer and New London, Ohio, located 15 miles west of Spencer. Carrier also maintains an Operator-Clerk position at Spencer the assigned hours of which are 12:01 a.m.- 8:01 a.m. The record does not disclose the assigned work or relief days for the Operator-Clerk at Spencer.

The Carrier claims that it also maintains an Operator-Clerk relief position to relieve the Operator-Clerk at Spencer on Thursday and Friday, to relieve the Agent on Saturday at Spencer, to work as an Operator-Clerk at Spencer on Sunday and on Monday to relieve the Operator-Clerk at Medina, Ohio, 16 miles east of Spencer, Carrier's Submission pages 1 and 2.

The Petitioner's case rests on the contention that the Relief works 9:00 a.m. - 5:00 p.m. on both Saturday and Sunday and therefore is relief for the Agent on both days. It is agreed that on Saturday he protects the Agent position, covering both Spencer and New London, as the Agent does Monday through Friday. Here the parties part company. The Carrier contends that because on Sunday the Relief does not go to New London that he is not doing the work of the Agent. Also, that there is no work for an Agent on Sunday. In addition, the Carrier has attached as an Exhibit the bulletined positions, dated March 9, 1970, which specifies, "Saturday-Agency, Spencer, Ohio; Sunday - Operator-Clerk, Spencer, Ohio."

The Carrier's position is that the Agent covering Spencer and New London is a 6 day, not a 7 day, position and that under the applicable Rule 4 (e), the Relief on Sunday may be assigned, "---to perform relief work on certain days and such types of other work on other days as may be assigned under the agreement."

The claim obviously is for Agent's pay for Sunday as well as for Saturday because the assigned hours are the same and the only person who works those hours is the Agent. Consequently, the Agent is the only man being relieved and Agent's pay is appropriate.

The Organization relies on prior Third Division Award 13090 which discusses therein prior Third Division Award 5722. Award 13090, involves the same Carrier as in this case and the situation is comparable. In both Awards, the Opinion may be summarized as agreeing with the Organization's position that the hours worked by the Relief will determine which position is being relieved and therefore the proper rate of pay.

However, both Awards go more extensively into the 6 or 7 day nature of the position under discussion and the duties being performed. In this case the record is not complete.

Does the Operator-Clerk position remain unfilled on Saturday and Sunday? Are the duties of the Relief on Sunday substantially similar to the Agent's duties? Both parties have made assertions which however, do not provide evidence of the facts.

The Board's Opinion in Award 5722, on page 9 of Award 13090, states that: "Under the description of the positions---there is no question that the position being relieved is the 8:00 a.m. to 4:00 p.m. position---. There is no other position between those hours to be relieved on the day in question." However, in this case the Carrier claims that there is no Agent position on Sunday during those hours and the Petitioner has not described the position being relieved.

Award 13090, in the Board's Opinion on page 20, states: "Someone was relieved on Sunday and we believe it was the agent since the agent was on rest days, Saturday and Sunday, and the relief man who relieved him on Saturday---was the same man who performed essentially the same duties on Sunday, during the same hours, as he performed them on Saturday." In the present case, the parties agree that the relief does not go to New London on Sunday as he does on Saturday and as the Agent does Monday through Friday. Is this sufficient to establish that the duties are not "essentially the same duties."

In Award 13090 on page 7, reference is made to Award 1314, in which the nature of a position is discussed at length. For example: "A position becomes manifest by the functions which attend it---."

In short, the record in this case does not tell us enough. Are the assigned hours, standing alone, sufficient to establish the nature of the position so that the higher rate of pay would apply? We believe that Awards 5722 and 13090 go a long way to support that conclusion. But they do indicate that more was known in those cases about the nature of the work being performed than we can find in this record, for the Sunday assignment.

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

Petitioner has failed to sustain the necessary burden of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.