

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22803
Docket Number CL-22816

George E. Larney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Union Pacific Railroad Company
((Eastern District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8777)
that:

1. The Company violated the Rules Agreement effective June 1, 1975, particularly Rules 1, 2, 3, 18, 38, 39, 41, and other Rules of the Agreement when the incumbent of position titled Bill and Yard Clerk, Marysville, Kansas, Seniority District No. 71, who at time of claim was H. M. Goins, was not called to perform work on rest day of Saturday.

2. The Company shall compensate the occupant of the position titled Bill and Yard Clerk for each and every Saturday beginning on claim date June 18, 1977 at the penalty rate of time and one-half for five (5) hours and twenty (20) minutes, continuing until adjusted, that Supervisory Agent performs work of Bill Clerk's position on Saturday the rest day of position titled Bill and Yard Clerk.

OPINION OF BOARD: At the time this instant dispute arose, Claimant H. M. Goins, was the incumbent occupant of the position titled Bill and Yard Clerk assigned to Carrier's open station located at Marysville, Kansas, Seniority District No. 71. The Bill and Yard Clerk position was established in 1960 and included in the work of this position was the duty of billing cars from Bestwall, Kansas located approximately ten (10) miles south of Marysville, Kansas on the Bestwall Spur. This part of the work entails travelling to Bestwall, securing all information necessary to waybill Bestwall cars and returning to freight house to bill the cars. The Bill and Yard Clerk position has assigned hours 8:00 AM to 4:00 PM with Saturday and Sunday as rest days and is a five (5) day assignment with no relief provided.

According to the Organization, because there was no relief assigned on Saturdays and Sundays, and no qualified extra or unassigned employee available to perform the work on the rest days, the occupant of the Bill and Yard Clerk position had blanket instructions to work each and every Saturday billing cars for Bestwall. The Carrier takes issue

with the Organization on this point contending that the Bill and Yard Clerk was called to go to Bestwall only when it was necessary to bill cars on Saturday. Pursuant to Rule 39 (b) of the Schedule Agreement, effective June 1, 1975, the Bill and Yard Clerk was compensated for five (5) hours and twenty (20) minutes at the overtime rate each time he performed Saturday work. Sometime prior to June 18, 1977, Carrier instructed the Agent at Marysville, a Mr. Wakefield, that he would be handling the Bestwall billing on Saturdays, effective June 18, 1977, and to advise the Claimant to remain at home on Saturdays from then on.

The Organization alleges, among other things, that the Carrier is in violation of Rule 41 (k) of the Schedule Agreement which reads in whole as follows:

"(k) Work on Unassigned Days. Where work is required by the 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 (40) hours of work that week; in all other cases by the regular employee."

The Organization asserts that prior to the claim date, Agent Wakefield never performed the duties of the Bill and Yard Clerk position. In view of this fact in addition to there not being a relief assigned on Saturdays nor any qualified extra or unassigned employee available to perform the work on the rest day, the Organization maintains that according to the very specific language of Rule 41 (k), the Claimant and not Agent Wakefield should have been called and continued to perform Saturday work at Bestwall since the duties involved are those regularly performed by Claimant during his work week from Monday through Friday.

The Carrier takes the position that when the directive was issued to Agent Wakefield to assume billing at Bestwall on Saturdays, effective June 18, 1977, that such billing work was hence made a part of the Agent's assignment and therefore there exists no violation of Rule 41 (k). The authority to combine duties of two positions on the rest day of one of those positions, the Carrier avers, flows from an Implementing Agreement dated May 23, 1975, pursuant to the June 1, 1975 Working Agreement, wherein there was provided for a consolidation of Schedule Rules between the Brotherhood of Railway Clerks and the Transportation-Communication Division of the Brotherhood of Railway Clerks. The applicable Implementing Agreement reads in relevant part as follows:

"(11) The inclusion of Rule 3 (Work Description) in the Merged Agreement is not intended to nor will such rule be construed to prohibit the assignment of clerical duties and work to Telegraphers or Telegraphic duties and work to Clerks, nor will it abridge the terms and provisions of Rule 25 (Preservation of Rates). However, if work is combined for the purpose of abolishing or creating new positions, the terms of Section 3 of Article VIII shall apply."

The Organization replies that the May 23, 1975 Implementing Agreement does not grant Carrier an unrestricted right to combine the work of the two positions involved in the instant case, that of Agent, carrying a (T) for Telegrapher designation and Bill and Yard Clerk with a (C) for Clerk designation. The Organization alludes to Article VIII of the February 25, 1971 Mediation Agreement between the National Carrier's Conference Committee and BRAC, noting that Article VIII was designed to grant local units of each craft some latitude in attempting to compose their differences. Also under Article VIII, the Carriers were entitled to "consolidate" Clerk and Telegrapher positions but only with proper notification and only under the strict guidelines of the Master Agreement or any Implementing Agreements made on the property pursuant to the merger. Operating under the dictates of Article VIII, the parties consummated the new Working Agreement of June 1, 1975 covering the merged crafts. The Organization acknowledges that under the expanded provision of Section 3, Article VIII of the 1971 Mediation Agreement, duties of a "T" and "C" position can be combined without having an abolishment or creation of a new position taking place. However, the Organization notes, such a combining of work and/or functions to be performed by Clerks and Telegraphers cannot be instituted unilaterally by the Carrier as there exists proper notification procedures associated with such actions as set forth in Section 7 of Appendix 14 (A) and Section 9 of Appendix 14 (B), both a part of the June 1, 1975 Working Agreement. These provisions read in whole as follows:

"(7) The provisions and terms of Article VIII (Consolidation of Clerk-Telegrapher Work) of the Mediation Agreement dated February 25, 1971, shall, except as otherwise mutually agreed to by the parties, apply with respect to combining, dovetailing and designating seniority districts and seniority district rosters, establishing "C" and "T" designated positions and serving appropriate notices for the combining of work and/or functions to be performed by Clerks and Telegraphers."

"(9) The provisions of Article VIII (Consolidation of Clerk-Telegrapher Work) of the Mediation Agreement dated February 25, 1971, shall, except as otherwise mutually agreed to by the parties, apply with respect to appropriate notices for the combining of work and/or functions to be performed by Clerks and Telegraphers."

The Organization notes that Section 3 of Article VIII provides that when the work of a "T" and "C" position is combined, a 30 day prior written notice shall be furnished the General Chairman. This notice, the Organization asserts, was never given to the General Chairman in the instant case and, in fact, the Organization maintains, they never were aware prior to this claim being progressed to the Board, that Carrier had issued a written instruction to Agent Wakefield relative to his performing the Saturday work at Bestwall. Rather, the Organization states, they were led to believe the Agent merely commenced performing this Saturday Bestwall work on his own volition. Thus, it is the Organization's position that neither Article VIII of the February 25, 1971 Mediation Agreement or the May 23, 1975 Implementing Agreement of the June 1, 1975 Working Agreement were intended to permit the Carrier to nullify Rule 41 (k) or render ineffective a (C) employee's right to perform work on his rest day that he exclusively performs during his five-day assignment.

The Organization has sufficiently demonstrated that the work of billing cars at Bestwall has been a duty performed by Claimant's position of Bill and Yard Clerk ever since that position was established some seventeen (17) years ago, back in 1960. There was no showing by the Carrier anywhere in the record that any clerical work of the Bill and Yard Clerk position is work performed by the Agent's position during his work week. With regard to this latter point, we cite the following two Third Division cases.

In Award 14903 we held:

"Although Carrier alleges that the Rate Clerk was assigned to perform messenger work on Saturdays by bulletin issued August 31, 1949, no such bulletin appears in the record, and the Employees deny that any was ever received. In the absence of probative evidence of such a bulletin, Carrier's allegation is only an assertion, and not evidence which may here be given credence. The record does show that the Claimant did perform messenger and clerical work at overtime pay on his rest days, Saturdays and Sundays. There is no convincing evidence that the work of Clerk-Messenger was part of the regular assignment of the Rate Clerk or the Chief Clerk on Saturdays and Sundays."

In Award 17844 we held:

"Rule 37(c-6) is a specific rule covering work on unassigned days and is applicable in our present dispute. The Claimant was 'the regular employee' under Rule 37(c-6). There is no showing in the record that the Agent performed the work complained of on other days of his assignment. The Memorandum of Agreement of November 1, 1940, is a general rule which would have application where the conditions referred to regularly exist. It does not apply to a situation such as here, where the work is regularly done by Claimant on the work days of his assignment."

Based on the foregoing discussion, it is the judgment of this Board that the Organization has met its burden of proof in the instant case. The claim will be sustained.

The Carrier shall compensate the occupant of the position titled Bill and Yard Clerk for five (5) hours and twenty (20) minutes at the rate of time and one-half beginning on Saturday June 18, 1977 and for each and every Saturday thereafter the Agent performed the work of the Bill and Yard Clerk position.

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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.

