

COPY

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 36

STATEMENT Claim of the System Committee of the Brotherhood that:
OF CLAIM:

(a) The Carrier violated and continues to violate the rules of the Clerks' Agreement at Pier 39, New York, N. Y., when beginning with September 17, 1951, and subsequent thereto it refused and continues to refuse to call Assistant Foreman George M. Lowe to perform service on his position on his rest day Monday prior to March 24, 1952, and rest day Saturday subsequent to that date, which service was on days not a part of any assignment and regularly assigned to and performed by him during his work week, and

(b) Assistant Foreman George M. Lowe shall be compensated at the rate of time and one-half for every Monday or Saturday, as the case may be, on which Carrier denied him the opportunity to work, and

(c) It is respectfully requested that a joint check of Carrier's records be made to determine the exact number of days involved.

FINDINGS:

Claimant, an Assistant Foreman at Pier 39, New York, prior to September 11, 1951, worked a regular assignment from 3:30 PM to Midnight, with rest days of Saturday and Sunday. Effective September 11, 1951, and continuing until March 24, 1952, his rest days were changed from Saturday and Sunday to Sunday and Monday. March 24, 1952 his rest days were changed back to Saturday and Sunday and his hours from 3:00 PM to 11:30 PM. During the period from September 11, 1951 to March 24, 1952, the Carrier commonly worked Foreman Mazine, an employee senior to claimant, from 8:00 AM through Midnight on Mondays. After March 24, 1952, it was frequently necessary to work a gang at Pier 39 on Saturdays for a full eight hours, starting at times varying from 8:00 AM to 3:00 PM. The Carrier called Mr. Mazine and some other assistant foremen to perform this Saturday work.

This claim is made for each and every Saturday or Monday that the claimant was denied the right to work.

The employees cite Rule 4(b-2) in support of this claim and argue that there being no available extra or unassigned employee who would otherwise not have forty (40) hours of work in that week, the Monday and Saturday work belonged to the claimant.

Carrier argues that the work performed on Mondays during the period September 11, 1951 to March 24, 1952 was work required on a day which was part of Foreman Mazine's assignment and consequently 4(b-2) has no application to those days. With respect to the claimed violations following March 24, 1952, Carrier argues that when the Saturday work fell within the regularly assigned hours of claimant, he had a right thereto and has offered to pay claimant at pro rata for such Saturdays but not for other days when the Saturday work was not all performed with the hours of his regular assignment.

Rule 4(b-1) requires that when it is necessary to work overtime before or after assigned hours, employee regularly assigned to the position on which overtime is worked will be given preference. It would appear that under this rule it was proper to use Mr. Mazine on the Mondays involved.

Rule 4(b-2) provides as follows:

"When work is required by the Management 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."

Obviously for the period following March 24, 1952, the supervision of the gangs worked on Saturdays was work required on a day which was not part of any foreman or assistant foreman's assignment. There was no available extra or unassigned employee who otherwise would not have had 40 hours of work in that week. The problem, therefore, is to determine who is the regular employee with respect to the gang supervision required on Saturday. Such work is just as much a part of the regularly assigned duties of a foreman as it is of an assistant foreman. Claimant, therefore, was not the only regular employe with respect to that work. Neither was Mr. Mazine since it appears that there were other assistant foremen who were called to work on Saturdays. In this situation since there were several employees who might properly be considered as "the regular employee", the work should be assigned to the senior man, inasmuch as it is implicit in the seniority rules that where there are two or more employees otherwise equally entitled to work, the senior should be chosen.

The claim should, therefore, be disposed of on the basis of allowing the claimant one day at pro rata for each Saturday on which he was available when an assistant foreman or foreman junior to him was used to perform the work of supervising gangs at Pier 39 on Saturdays following March 24, 1952 when such Saturday work was not part of any assignment and no extra or unassigned employee, who did not otherwise have forty (40) hours of work in the weeks involved, was available.

AWARD

Claim disposed of as indicated in Findings.

/s/ Francis J. Robertson
Chairman

/s/ E. J. Hoffman
Employee Member

/s/ T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this
25th day of August, 1959.