

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on September 30th, 1942, it utilized H. C. Landreth, General Clerk, rate \$5.59 per day, at Carthage, Mo., after 4:00 P. M. to bill and rate three (3) cars of explosives and three (3) cars of stone, which work is a part of the regular assigned duties of the Bill Clerk position, rate \$6.19 per day, occupied by Clerk, Mr. W. B. Adams and failed and refused to allow Mr. Adams pay for a "call" \$2.32 as claimed by him account of the Carrier's action in violation of the agreement in denying him the right to perform this work.
2. That Clerk, Mr. W. B. Adams, shall be compensated in the amount of \$2.32 for September 30th, 1942, account failure of Carrier to comply with the agreement and permit him to perform the work here involved on the date stipulated.

EMPLOYES' STATEMENT OF FACTS: The station force at Carthage, Mo. subject to the scope and operation of the Clerks' Agreement, the assigned hours and the rates of pay attaching on September 30, 1942, was as follows:

At LOCAL FREIGHT OFFICE

Classification	Daily Rate	Name of Occupant	Hours of Assignment	Days Per Week
Chief Clerk				
Cashier	\$6.94	Harris, A. L.	8 AM to 12—1 PM to 5 PM	6
Bill Clerk (Yard Clerk)	6.19	Adams, W. B.	7 AM to 11 AM—12 to 4 PM	7
Gen'l Clerk	5.59	Landreth, H. C.	2 PM to 7 PM—8 PM to 11 PM	6
Gen'l Clerk	5.59	Erwin, C. M.	6 AM to 2 PM	6

At WAREHOUSE

Warehouse Foreman	5.74	Smedley, A. W.	10:30 AM to 6:30 PM	6
Check Clerk	5.59	Clevenger, Y. L.	3:30 AM to 11:30 AM	6

to handle this work, and that was the General Clerk, Mr. Landreth. Mr. Landreth performed the work, and this is what he was employed at this station to do—CLERICAL WORK of a miscellaneous character.

POSITION OF CARRIER: In the presentation of this case to the Management the employees requested that Mr. Adams, the Bill Clerk, whose assigned tour of duty is 7:00 A. M. to 4:00 P. M., be compensated for a "Call" 3 hours pay at 77 $\frac{3}{4}$ ¢ per hour, amount \$2.32, account not called to perform the clerical work of making waybills for three cars of stone and three cars of explosives that was performed by Station Clerk Landreth after Mr. Adams' tour of duty had expired—4:00 P. M., September 30, 1942. The employees base their claim on Rules 54 and 55 of Agreement between the Railroad Company and the Clerks' Organization dated August 1, 1926. The rules read:

OVERTIME AND CALLS

Overtime, Rule 54

"Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

Notified or Called, Rule 55

"Employees notified or called to perform work and not continuous with, before, or after the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

The rules heretofore quoted contemplate a basis for compensating employees for services performed. In this case no service of any description was performed by Adams.

There are no rules contained in the Agreement between the Carrier and the Clerks' Organization dated August 1, 1926, that in any manner whatsoever obligates the Management to call a Bill Clerk at a local station back to work after he has left for the day to prepare the waybills for cars received for shipment when there are other clerical forces on duty at the station to perform this clerical work. The Management had provided clerical workers at this station to perform the clerical work. Mr. Landreth, the General Clerk, performed what he was called upon to perform. That is, what he was employed to do. Mr. Adams, the Bill Clerk, is employed to work between the hours of 7:00 A. M. and 4:00 P. M. This clerical work of not more than 1 hour duration was not performed until after 4:00 P. M. and during the regular assigned tour of duty of Mr. Landreth, the General Clerk.

There is, as heretofore stated, no rules in our agreement with the Clerks' Organization, effective August 1, 1926, that would in any manner whatsoever, by implication or otherwise, justify sustaining Mr. Adams' claim and the Management feels that your Honorable Board will so find.

OPINION OF BOARD: The claimant was a Bill Clerk with assigned hours from 7:00 A. M. to 4:00 P. M. with an hour out for lunch. A part of his regular duties as Bill Clerk was to bill and rate cars. On September 30, 1942, after 4:00 P. M., a General Clerk, then on duty, was required by the Carrier to bill and rate three cars of explosives and three cars of stone. This was not a part of the General Clerk's regular duties.

The claimant contends that he should have had a "call" and been permitted to do this work and that the Carrier, by denying him the right to perform this work, has violated the agreement and should pay the claimant \$2.32 for the "call" to which he was entitled.

The claimant relies on Rules 4, 54, 55, 65, 66 and 82. None of these rules expressly give to the claimant the exclusive right to perform outside of his tour of duty the work which he performs during his assigned hours. Nor do we find that any of these rules give the claimant the implied exclusive right to perform such duties.

Rule 4 provides for promotions according to seniority. Rules 54 and 55 provide for penalties for overtime and "calls" outside of regularly assigned hours. Both of these rules have for their primary purpose the discouragement of overtime and "call" work. Rule 66 provides for the rate of pay to employees temporarily or permanently assigned to higher rated positions. Rule 82 gives the method for changing the rules. We find nothing in these rules on which to base an implied exclusive right to the work here in question.

It seems that prior to the assignment of General Clerk Landreth, the claimant was occasionally required to bill and rate cars of outgoing freight after his regular tour of duty, and for such work outside of his regular hours was paid a "call" or for overtime. General Clerk Landreth was competent to bill and rate cars and the Carrier insists that while he was on duty, there is nothing in the agreement which prevents his being used for occasional work of this nature or which requires the Carrier to assign such work to the claimant when he is off duty.

The fact that the Carrier theretofore had called on the Bill Clerk to do occasional work of this kind when the General Clerk on duty was incompetent to do it, would not bind the Carrier to assign all such work to the Bill Clerk who was off duty, when the General Clerk on duty was competent to do it.

The employees place much emphasis on Rule 66 as supporting their contention. They insist that the assignment of the General Clerk to do this work constituted a "temporary" assignment to the "higher rated position" of Bill Clerk. If this contention be true, certainly there is implied the right to so assign the work to Landreth on the payment to him of the higher rate, without any violation of the claimant's rights.

It is also contended on behalf of the claimant that when he bid in the Bill Clerk job his bid and the bulletin for the position gave him some sort of a contractual right to the exclusive performance of all work of this nature. The record fails to disclose the bulletin on this position or what description of the position it contained.

The employees concede that if another Bill Clerk were assigned to the shift beginning at 4:00 P. M., he could do all such work without violating any rights of claimant. This would seem to dispose of the contention that claimant, by his taking this position of Bill Clerk for eight hours per day, acquired the contractual right to perform this work outside of his assigned hours.

It has been pointed out by the employees that about five agreements with other carriers expressly provide that where it is necessary to do work of a certain class, before or after assigned hours, such work shall be done by employees regularly assigned to such class of work. This agreement contains no such provision.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 this claim discloses no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.