

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Fred W. Messmore, Referee**

**PARTIES TO DISPUTE:**

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

**ILLINOIS CENTRAL RAILROAD COMPANY**

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

1. The Carrier violated Clerks' Agreement when it required or permitted Mr. Henry Meyer—Station Accountant (excepted position) to perform 12 hours clerical work attaching to clerk R. C. Hudson's position, and,
2. R. C. Hudson be compensated for 12 hours at time and one half rate during week of May 22-27th, 1944.

**EMPLOYES' STATEMENT OF FACTS:** R. C. Hudson is assigned to position of Utility Clerk in Accounting Dept., freight office, Memphis, Tenn. His regular and customary work consists of the following: checking and handling government bills of lading, working uncollected freight charges account, checking government freight bills against waybills, adding station numbers to all interline waybills, filling in uncollected statement for previous month, checking government freight bills for junctions, checking unreported waybills.

Henry Meyer is assigned to the excepted position of Station Accountant in the freight office at Memphis. He is the head of the Accounting Dept. in this office. During the week of May 22-27, 1944 while another clerk (Johnson) was on vacation, clerk Hudson was required to vacate his position in the Accounting Dept. to work on Johnson's position of switch order clerk during his regular assigned hours of 8 A. M. to 5 P. M. He performed certain of his own work during this week at overtime hours as follows: May 22—4 hours, May 23—2 hrs., May 24—2 hours, May 26—3 hrs., May 26—2 hours and May 27—2 hours—a total of 15 hours.

During this same week the occupant of excepted position of Station Accountant worked 12 hours on work usually and customarily performed by Clerk Hudson, thereby depriving him of such work during that week.

**POSITION OF EMPLOYES:** There is in evidence between the parties an agreement, bearing effective date of June 23, 1922 and revised Sept. 1, 1927 which contains the following rules:

**RULE 1—Scope**

These rules shall govern the hours of service and working conditions of the following employees subject to the Exceptions noted below:

- (1) Clerks—

will be seen that Mr. Hudson worked eight hours regular time on each day May 22-27, 1944, and in addition, worked penalty overtime in the amount of four hours on the 22nd, three hours on the 25th, and two hours each on the 23rd, 24th, 26th, and 27th, a total of fifteen (15) hours' overtime. This penalty overtime exceeds by three (3) hours the twelve (12) hours claimed by Mr. Hudson because Mr. Meyer performed work allegedly a part of Mr. Hudson's assignment. In addition to this, Mr. Hudson handled 373 claims in overtime hours, on piece work basis of five claims per hour, this amounts to 74.6 hours.

The record shows that Mr. Hudson worked each hour of his regular assignment during the second period of May 1944, and in addition thereto 89.6 hours, for which he received compensation at rate of time and one-half for 15 hours and on piece work basis for 74.6 hours. It will also be noted the Exhibit shows that Clerks Harris, Hurt, and Maddox worked 13 hours overtime on Hudson's assignment. Attention is also called to the fact Mr. Hudson's earnings during this period exceeded the earnings of Mr. Meyer, the station accountant, by \$65.45. Mr. Meyer performed no work during overtime hours on the dates in question.

This Division has heretofore established the principle that an employe cannot recover damages if he has worked and has been compensated for the time for which claim is made. Awards Nos. 1453 and 1610. Under this principle, the claim is invalid since Mr. Hudson was compensated for both regular and overtime hours on all dates involved in this claim. See Carrier's Exhibit "A".

The Carrier maintains that it has shown the employes' claim to be without merit and requests that it be declined for the following reasons:

1. No rule in the effective agreement has been violated and for this Board to sustain the employes in this claim it would have to write a new rule and this it has no authority to do.
2. The position of Station Accountant is excepted from the Agreement and, under the holdings of this Board, all work attendant thereupon is also excepted therefrom.
3. Mr. Hudson occupies a position upon which there devolves no regularly assigned duties and, therefore, under the holdings of this Board, no work is regularly attendant thereupon nor encompassed thereby.
4. Mr. Hudson has never done more than intermittently assist Mr. Meyer with the overflow of work recognized as being inherent in, and characteristic of, the position of Station Accountant.
5. Mr. Hudson has, in no case, a proper claim in this instance since he worked during, and was paid for, the time involved in this dispute.
6. Claim is unjust and not in equity.

**OPINION OF BOARD:** The facts heretofore appear in the submission of the parties and are not in substantial dispute, and need not be repeated. The relationships and circumstances surrounding the questioned work are of first importance in arriving at a correct conclusion.

It is the Brotherhood's contention that Rule 1, the Scope of the Agreement, and Rule 37, the Overtime Rule contained in the Agreement, have been violated by the Carrier when it permitted the station accountant, an excepted-position employe, to perform 12 hours work which the Brotherhood claims was work regularly assigned to the Utility clerk, and by the Carrier so permitting the excepted employe to perform such work, denied the utility clerk the overtime that would have accrued to him had he been permitted to perform such work. The Carrier contends that the utility clerk had no regularly assigned duties, but intermittently assisted the station accountant with the overflow work inherent in the station accountant's position.

The duties of the station accountant are many and varied, and are set forth in the Carrier's submission. The work claimed to have been assigned regularly to the utility clerk is set forth in the employees' submission. When the position was bulletined it disclosed the duties thereunder to be "Assisting Station Accountant handling Government bills of lading, uncollected, etc., and any other work assigned to him in this or other departments as directed. Applicant must be qualified to handle any work in any department." It is obvious, when the position was bid in, the nature of the employment was understood between the parties, and the requirements thereof were likewise understood. When the utility clerk was required to do the work of the switch-order-clerk, he was performing a utility duty. The duties that he regularly performed constituted excess work, or overflow, from the position of station accountant.

We conclude that in the light of the record, the Carrier has not violated the agreement, and the claim should be denied.

**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 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 Carrier has not violated 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 March, 1947.