

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Clerk G. W. Bechtol be paid eight hours pay at punitive rates due to Yard Master performing the clerical duties of regular third trick clerical position, Symbol B-54-G, on January 1, 2, 3, 4, 7, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, February 2, 3, March 8, 10, 11, 17, 24, 31, 1945. (Docket W-355)

EMPLOYEES' STATEMENT OF FACTS: The claimant, G. W. Bechtol, is regularly assigned to clerical position B-49-G, Lincoln Yards, Detroit, Michigan, with a tour of duty from 7:00 A. M. to 4:00 P. M. (one hour lunch period), with relief day Monday. The rate of pay of this position was \$217.96 per month during the period involved in this claim and the position is a "seven day" position, the occupant of which position is necessary to the continuous operation of the carrier.

Position B-54-G involved in this claim is also located in Lincoln Yards, Detroit, Michigan, with a tour of duty from 12 Midnight to 4:00 A. M. and 5:00 A. M. to 9:00 A. M., (one hour lunch period) with relief day Saturday. The rate of pay of this position was \$203.96 per month during the period involved in this claim and this position is also a "seven day" position as described above.

An extra list of one employe is established at Lincoln Yards to fill vacancies in that territory, under the terms of the Rules Agreement of May 1st, 1942.

Due to a Yard Master performing the regular duties of position, Symbol B-54-G, claim was made as indicated in the Statement of Claim and was denied by the Carrier. No other claims were filed.

There is in evidence a Rules Agreement between the parties bearing effective date of May 1st, 1942.

POSITION OF EMPLOYEES: Clerical position, B-54-G is a regular established position on third trick, Lincoln Yard, Detroit, Michigan, and has been in existence since the establishment of that yard. On the dates in question the regular occupant of this position was absent and duties of the position were performed by a Yard Master.

There seems to be no dispute between the parties that a violation of the Rules Agreement occurred in this instance and we quote in substantiation of

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that, under the applicable Agreement between the parties to this dispute, the Claimant made no request for the work on position B-54-G and that, furthermore, it was a physical impossibility for him to have worked both assignments.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

OPINION OF BOARD: This is a claim of the Brotherhood that Clerk G. W. Bechtol is entitled to a day's pay at time and one-half rate for clerical position Symbol B-54-G for 27 days in January, February and March, 1945, these being days when a Yardmaster was allowed to perform the clerical duties of this designated position. The position is a seven day position necessary to the continuous operation of the Carrier and the assigned hours are Midnight to 4:00 A. M. and 5:00 A. M. to 9:00 A. M. with relief on Saturday.

Bechtol held regularly assigned clerical position Symbol B-49-G at Lincoln Yards, Detroit, Michigan, with assigned hours from 7:00 A. M. to 4:00 P. M. with relief day on Monday. There is another clerical position at this yard carrying Symbol B-52-G with assigned hours 4:00 P. M. to 8:00 P. M. and 9:00 P. M. to 1:00 A. M. At this yard there is an extra board carrying by agreement one clerk. If there are other clerical employees at this yard that fact is not shown by the records here.

On the days in question position B-54-G was not occupied by anyone covered by the Clerks' Agreement on account of the absence of the regular occupant thereof. In consequence of this, the Yardmaster performed duties of the position. This the Organization contends was improper. It contends that Bechtol should have been assigned to perform this work outside his regular assigned hours as overtime employment and that for the work as overtime he should be paid at the time and one-half rate.

The Carrier contends that on a proper analysis of the facts as disclosed by the record and a proper application of the rules no proper basis may be found upon which to rest a determination in favor of the claimant.

We do not find a substantial difference of opinion as to the general meaning or application of the rules, therefore we find it unnecessary to set out the appropriate ones here.

It appears sufficient to say that under ordinary conditions if position Symbol B-54-G were vacant, on any day for any reason then the clerk on the extra list would be entitled to it if available. If the extra clerk was not available, then a regularly assigned clerk would be entitled to protect it as overtime if he could do so outside of his regularly assigned hours. Beyond that we need not go except to say that the vacancy could not properly be assigned to an employee covered by another agreement for filling along with the regular duties of his own assignment.

We think, however, that an exception to the general rule must be recognized where there is an impossibility of compliance with the general requirement because of non-availability of anyone for use in the position at the time.

It becomes necessary therefore to ascertain whether or not the determination here must respond to the general rule or to the exception. To ascertain this, it becomes necessary in considerable measure to rely upon reasonable inferences rather than positive evidence.

Was the extra clerk available on any or all of these days? We assume that she was not for four reasons: (1) that she was called January 1, 3, 4 and February 2 and declined and there was no effort to show that she was available on the other days; (2) the claim was made on behalf of a regularly assigned clerk and such clerk was not eligible unless the extra clerk was unavailable; (3) the one and one-half time rate was not applicable except in case of the filling of the vacancy by a regularly assigned employe outside his regularly assigned hours; and (4) the Carrier asserts that neither the extra clerk nor any other clerk was available.

Was Bechtol available? We think it must be said that he was not. For him to have taken the assignment would have required him, in order to allow him to hold his regularly assigned position, to abandon it two hours before the expiration of its assigned hours. There is a presumption that work was necessary on both positions for the total assigned hours.

Was the other assigned clerk available? We think that likewise it must be said that he was not. For him to have taken it would have required him to abandon his regularly assigned position one hour before its expiration. The same presumption that attached to the other two positions also attached to this one.

Thus on the face of the record as presented the Carrier was confronted with a situation wherein no one covered by the agreement was available to fill this vacancy in a position necessary to the continuous operation of the Carrier, and with the necessity to keep the trains moving. Necessary clerical work had to be performed. The vacancy was not filled by a Yardmaster but the Yardmaster was allowed to perform that which was necessary at the time for operation.

It appears that the Carrier was confronted with an emergency for which, in the absence of bad faith in meeting it or in the absence of reasonable foresight in preparation to meet such emergencies, it ought not to be penalized in favor of this Organization.

The only evidence of bad faith or lack of reasonable foresight is the large number of days on which this situation arose. This alone we do not consider sufficient such evidence.

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 Employes involved in this dispute are respectively carrier and employes 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1948.