

Award No. 4933
Docket No. CL-4876

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That the Carrier violated the Clerks' Agreement, effective May 29, 1942 when it failed to assign Richard H. Farnsworth, Freight Clerk, White River Jct., Vermont, to overtime work required on his position, but instead said work was performed by Agent E. P. Martel, an employe outside the scope of the Clerks' Agreement, during the spread of his assigned bulletin hours and on an overtime basis during the payroll periods week ending March 4, 1948 and March 11, 1948, and
2. That the Carrier shall be required to reimburse Freight Clerk Richard H. Farnsworth for the loss of this overtime work on the following basis:

(a) During the payroll period week ending March 4, 1948—
eight (8) hours overtime at one and one-half times the regular straight time rate of his position, \$9.24 per day.

(b) During the payroll period week ending March 11, 1948—
seven and one-half ($7\frac{1}{2}$) hours representing the difference between overtime worked by Agent Martel and that worked by Freight Clerk Farnsworth, at one and one-half times the regular straight time rate of his position, \$9.24 per day.

JOINT STATEMENT OF FACTS: Richard H. Farnsworth is employed as a Freight Clerk at White River Junction, Vermont with assigned bulletin hours from 6:00 A.M. to 3:00 P.M., lunch period 11:00 A.M. to 12:00 noon—rate of pay \$9.24 per day, and appears upon the January 1, 1948 Seniority Roster of Freight Clerks and Yard Clerks, Fitchburg Division, with a Service and Seniority Date of October 1, 1941.

E. P. Martel, an employe outside the scope of the Clerks' Agreement, is employed as Freight Agent at White River Jct., Vt., with assigned bulletin hours of 7:00 A.M. to 4:00 P.M., rate of pay \$1.35 per hour—\$10.80 per day.

Billing of freight is a part of the assigned duties and responsibilities of Clerk Farnsworth's position as Freight Clerk.

During the payroll periods week ending March 4, 1948 and March 11, 1948, there was a need for freight billing work to be performed on an over-

Penalties should not be awarded by implication. (See Awards Nos. 5821, 6385, 6758 and 8259, all First Division). Petitioner likewise ignores the Awards of the Adjustment Board which have held that the penalty for "work lost" is the pro rata rate of the position. (See Awards Nos. 2346, 2695, 2823, 3049, 3198, 3488 of the Third Division and Awards Nos. 1268 and 1269 of the Second Division). Carrier does not intend to infer that any award other than an absolute denial is justified in this case but merely offers the above as evidence of the utter inconsistency of Petitioner's position.

SUMMARY

Carrier has attempted in its Position above to clearly indicate that there is no merit in the claim of Petitioner. Carrier believes it has conclusively proven its case by making the following points—

There is a jurisdictional dispute involved in this case over which the Board should decline jurisdiction. The work of "billing of freight", is not the exclusive property right of Petitioner's represented employees at White River Junction, Vermont, some of this "billing of freight" has always been done by the Agent. There is no rule in Petitioner's Agreement which in any way supports the claim. The claim, in itself, is frivolous and undeterminable, as the amount of time actually spent by the Agent on work alleged to belong to Claimant is unknown. There is no basis for the time and one-half aspect of the claim for sustained decision in bona fide "work lost" cases have been only on pro rata basis for actual admitted or proven amounts of time.

The claim should be denied.

OPINION OF BOARD: The facts are not in dispute in this claim. The claimant is employed as a Freight Clerk at White River Junction, Vermont, with assigned bulletin hours from 6:00 A.M. to 3:00 P.M., lunch period from 11:00 A.M. to 12:00 Noon, rate of pay, \$9.24 per day, and seniority date of October 1, 1941. E. P. Martel, an employee outside the Scope of the Clerks' Agreement, is employed as Freight Agent at the same station, with assigned bulletined hours of 7:00 A.M. to 4:00 P.M., rate of pay, \$1.35 per hour—\$10.80 per day.

From the joint statement of facts it is conceded that the billing of freight is a part of the assigned duties and responsibilities of the Claimant.

The Employees claim that during the payroll period ending March 4, 1948 and March 11, 1948, there was need for freight billing work to be performed on an overtime basis after the Claimant left his tour of duty at 3:00 P.M. No attempt was made by the Agent, Martel, to assign such work to the Claimant or to ask the Claimant to perform such work on an overtime basis. Claimant was available and willing to perform said work. Agent Martel took over said work and performed part of said work on his regular tour of duty and part as overtime. The Employees claim that the Carrier violated Rule I, Scope, Rule 22(b) and Rule 3, Seniority. Rule 22(b) reads:

"In working overtime before or after assigned hours, employees regularly assigned to the positions on which overtime is required will be utilized. Where overtime required involves work of several positions, and less than regular number of employees are utilized, senior qualified employees, where portion of their regular duties are included in the overtime required, will be assigned."

The Agent was not within the Clerks' Agreement. The performance of the work by the Agent was a removal of the work from the Scope of the Clerks' Agreement, Rule I. The work belonged to the Claimant under Rule 22(b). It is therefore a violation of the Agreement to permit the Agent to perform the work in question. Awards 60, 67, 420, 1630, 2044 and 2163. The claim will be sustained at the pro rata rate of Claimant's position. Award 4196.

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 Carrier violated the Agreement.

AWARD

Claim sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.