

Award No. 5331
Docket No. CL-5255

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

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

(a) The Carrier violated and continues to violate the Clerical Agreement when it required Mr. H. T. Patterson or his successors to leave his or their regularly assigned position of Rate and Bill Clerk at Lancaster, Ohio Freight House and report to the Ticket Office 45 minutes in advance of the starting time of the Ticket Clerk and perform work attached to that position, and

(b) That Mr. Patterson shall be additionally paid 45 minutes at the punitive rate of \$10.39 per day for each day required to suspend work during his regularly assigned hours as Rate and Bill Clerk and report and perform work at the Ticket Office subsequent to March 10, 1948.

EMPLOYES' STATEMENT OF FACTS: On the date the claim began, the Carrier employed and maintained at Lancaster, Ohio, the following clerical force:

Position No.	Name of Employee Assigned	Title	Rate	Hours of Assignment
A- 2	Daniel Kelton	Chief Clerk	\$10.59	8:00 a.m.— 5:00 p.m.
A- 7	David Kelton	Cashier	10.49	7:00 a.m.— 4:00 p.m.
A-10	C. J. Hartman	Rate Clerk	10.39	9:00 a.m.— 6:00 p.m.
A-12	H. T. Patterson	Rate & Bill Clk.	10.39	9:00 a.m.— 6:00 p.m.
A-13	Lloyd Tobias, Jr.	Ticket Clerk	9.89	10:00 a.m.— 7:00 p.m.
A-14	E. Springer	Foreman	9.59	7:00 a.m.— 4:00 p.m.
A-15	P. H. Smith	Rate & Bill Clk.	9.39	10:00 a.m.— 7:00 p.m.
A-17	E. L. Wasem	Yard Clerk	9.24	5:00 a.m.— 2:00 p.m.
A-22	W. R. Matheny	Yard Clerk	9.24	1:00 p.m.—10:00 p.m.
C- 2	W. J. Urton	Trucker	8.40	7:00 a.m.— 4:00 p.m.

Lloyd Tobias, Jr., was regularly assigned to position of Ticket Clerk, No. A-13, with hours of assignment 10:00 A. M. to 7:00 P. M., rate of pay \$9.89 per day, days of assignment Monday to Saturday, inclusive, having been assigned to the said position by corrected addendum to Bulletin No. 49, March 10, 1948, and for the ready reference of the Board, we attach as Employees' Exhibit "A" copy of Bulletin No. 49, issued March 1, 1948, advertising the position of Ticket Clerk, also as Employees' Exhibit "B" corrected

2) We submit that Award 3417 and subsequent awards sustaining the principle evolved in that case are unsound for the reason that the absorption of overtime rule was never intended to apply where an employee is assigned different work during his regular hours of assignment. That is permissible if the rate structure is maintained.

3) The instant case is not one in which an employee has been taken off his job and placed on another or different one, which is the case in Awards discussed. Claimant was assigned a small amount of additional Group I lower rated work to be performed during his own regular hours of assignment. If the Board holds that this is a violation of the absorption of overtime rule it will in effect be saying a) Rule 45 means nothing and b) the work in question must, so long as it exists be perpetually performed on an overtime basis. Such was never the intention of either party to that rule and your Board has never so construed it.

The claim should in all respects be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: As of March 10, 1948 at Lancaster, Ohio, the clerical force, among other positions, included a position of Ticket Clerk, rate \$9.89, assigned hours, 10:00 A. M. to 7:00 P. M., and a position of Rate and Bill Clerk, rate \$10.39, assigned hours 9:00 A. M. to 6:00 P. M. Prior to September 28, 1947 the Ticket Clerk position, in addition to other work at the Freight Office, was assigned the handling of the passenger work (mostly ticket selling) in connection with Train No. 30 which arrived at Lancaster at 10:35 A. M. and Train No. 37 which was scheduled to leave Lancaster at 7:00 P. M. After September 28, the schedule of Train No. 30 was changed so that it was due to arrive at Lancaster at 9:35 A. M. In order to handle the passenger work in connection with the changed arrival time of Train No. 30, the occupant of the Ticket Clerk position was called 45 minutes in advance of his starting time and paid therefor at the punitive or overtime rate. This arrangement continued until March 11, 1948 when the occupant of the Ticket Clerk position was instructed not to come out in advance of his regular starting time. Thereafter, the occupant of the Rate and Bill Clerk position was sent from the Freight Office to handle the work of selling tickets for Train No. 30. Claim is filed on behalf of the occupant of the Rate and Bill Clerk position for 45 minutes at the punitive rate for each day that he was required to perform this work in connection with Train No. 30.

Employees contend that Rule 36 providing that employees will not be required to suspend work during regular hours to absorb overtime has been violated by the assignment of the ticket selling work to the position of the Rate and Bill Clerk.

There are innumerable Awards of this Board interpreting and applying the "absorption of overtime rule". It would serve no purpose to review them all in this Opinion. Without attempting in any way to limit the applicability of the aforementioned rule, we observe that generally the situation with which the Board was confronted in the dockets upon which those Awards were based involved either (1) the Carrier requiring an employee to discontinue work on his regular position and fill a vacancy on another position when otherwise the Carrier would have had to pay overtime to fill the vacancy; or (2) requiring an employee to suspend work on his assignment and perform work of other positions which work would otherwise have had to be performed on an overtime basis. In such situations the Awards of this Board have been quite consistent in holding that the "absorption of overtime" rule was violated. In both situations the work involved was not assigned to the positions of the claimants.

Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function

of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy. There is no rule in the applicable Agreement which requires that work once assigned on an overtime basis may not be assigned at straight time rates. Where the Carrier can get the work done at straight time rates without violating a provision of the Agreement it is within its province to do so. Here, because of an operational problem, it was necessary that certain clerical work be performed at 9:15 A. M. For some reason, not relevant here, Carrier determined that that operational problem could be met by assigning that work to the Rate and Bill Clerk position, thus eliminating the overtime on the Ticket Clerk's position. Both positions were in the same group and seniority district. To hold that Carrier could not have transferred the work involved under the circumstances here present without violating Rule 36 would require us to ignore the fact that other rules of the Agreement recognize that work may be assigned from one position to another and prescribe for the accomplishment of such changes. The Employees recognize that this is true for they state that the proper procedure for the Carrier to follow in this instance would be to negotiate with the General Chairman, as required by Rule 44, "if it desired to change the set-up from what it formerly had been."

Whether there had been a sufficient increase in the duties or responsibilities of the Rate and Bill Clerk position after March 11, 1948 to bring into play the requirements of Rule 44 is a matter upon which we make no finding for the claim is not founded thereon. In any event, we find no violation of Rule 36 in the action which the Carrier pursued herein.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of April, 1951.