

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

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

1. That the carrier violated the rules of the Clerk's Agreement when they failed to call Clerk John P. O'Donnell, incumbent of position of Clerk-Typist at Marcus Hook, Pennsylvania, on Washington's Birthday, February 22nd; Sunday, February 26th; and Saturday, March 4th, 1950, to perform duties in connection with billing of shipments of oil.

2. That John P. O'Donnell be paid a 4-hour call for Washington's Birthday, February 22nd; and Sunday, February 26th; and a 3-hour call for Saturday, March 4th, 1950.

EMPLOYEES' STATEMENT OF FACTS: On Washington's Birthday, February 22nd; Sunday, February 26th; and Saturday, March 4th, 1950, there were shipments of oil for movement from Marcus Hook, Pennsylvania, to various points. The shipments required that they be rated and billed on the dates in question for prompt movement.

During the period of time for which this claim is made and originated, Arthur E. Clayton, the incumbent of the Chief Clerk's position—assigned hours 8:30 A. M. to 5:30 P. M., Monday to Friday inclusive, was called to perform all the clerical duties in connection with the shipments originating on the above dates. Part of Mr. Clayton's duties is to rate all shipments originating at this point.

During the period of time for which this claim is made and originated, John P. O'Donnell was the incumbent of the position of Clerk-Typist, assigned hours 8:30 A. M. to 5:30 P. M., Monday to Friday inclusive. Part of the assigned duties of this position is to perform work in connection with the billing of shipments and typing of waybills after they have been rated. All the dates in question are unassigned days of the employees working at this respective station.

POSITION OF EMPLOYEES: The employees contend that John P. O'Donnell should have been called to perform the duties of billing in connection with the shipments on the dates specified in claim and statement of facts, he being the regular employee assigned to the duties in connection with billing of shipments at Marcus Hook, Pennsylvania. In support of their posi-

Under the facts and evidence and for the reasons set forth hereinbefore the Carrier maintains the claim as submitted by the employee is unsupported and unjustified and respectfully requests that same be denied.

The evidence contained in this submission has been discussed in conference and handled by correspondence with the duly authorized representative of the Clerks' Brotherhood.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is presented to us because of the alleged improper assignment of work by the Carrier. The Claimant was the incumbent of the position of Clerk-Typist and his assigned work week was Monday to Friday inclusive. The days on which the violations of the agreement are alleged to have occurred were on Washington's Birthday, and a Sunday and Saturday.

The Claimant Typist-Clerk had as his duties work in connection with the billing of shipments and typing of waybills after they had been rated.

On the dates involved, the Chief Clerk, whose work week was also Monday to Friday inclusive, was called to perform all the clerical duties in connection with certain shipments originating those dates. Part of the Chief Clerk's duties was to rate all shipments which originated at this station.

The Organization asserts that the Claimant should have had a call on each of the days here in question. In support of its position the Organization cites Rule 7 (f) and Rule 7 (i) of the effective Agreement.

"Rule 7 (f). No overtime hours will be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable.

"In working daily overtime, incumbents of the positions requiring overtime shall be given preference, except where extra employees are assigned in accordance with these rules."

"Rule 7 (i). Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

Rule 7 (f) has to do with daily overtime, contemplating proper assignment for time over eight hours on a position during a day. Clearly, this rule has no application to the present instance.

Rule 7 (i) is the pertinent rule and the one which we must consider to determine the rights of the Claimant.

The Chief Clerk and the Claimant are employees covered by the Clerks' Agreement. The record indicates that the Chief Clerk did, on occasions, assist the Claimant in the billing of shipments. Such practice apparently was being condoned by both parties.

Such practice of assistance was purely to help the Clerk-Typist in instances when the requirements of the service demanded it. It did not give the Chief Clerk the right to perform such work in preference to the Clerk-Typist, who had the duty of billing as a part of his bulletined duties.

We believe that Rule 7 (i) covers this situation and that such rule has been violated by the Carrier. Each day involved was a day which was not a part of any assignment. There were no extra clerks available nor was

an unassigned employe with less than forty hours used. The wordage of Rule 7 (i) which states "... in all other cases by the regular employe." covers this instance.

Carrier has attempted to construe "the regular employe" as meaning a regular employe. Such a construction would place practically limitless bounds on the Carrier in assigning work in similar instances and would do violence to the specific wording of Rule 7 (i).

The work of billing shipments was the regular work of the Clerk-Typist's position. It was not the regular work of the Chief Clerk.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1952.