

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

(a) That the Carrier violated the terms of the Clerical Agreement by failing and refusing to call Mrs. Annie R. Marshall, regularly assigned Serial Record Clerk, in the performance of overtime work attached to and accruing on her position; and

(b) That Mrs. Marshall shall now be paid in addition to all other earnings eight hours at time and one-half rate for January 15, 1951, and similarly compensated for any and all subsequent days on which she was, or hereafter is, denied such work.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the Carrier maintained at its Clifton Forge, Virginia, Yard a position known as Serial Record Clerk, being assigned six days per week, Monday through Saturday, Sunday being assigned as the day of rest.

On September 1, 1949, the revised Agreement embodying the so-called "40-Hour Week Rules" became effective, the Carrier designating Serial Record Clerk work as five-day service and assigning the Serial Record Clerk position number A-146 in this five-day service to work Monday through Friday, assigned rest days Saturday and Sunday, assigned hours 7:00 A.M. to 3:00 P.M., assigned rate \$10.92 per day. The position was not assigned to work on Saturday and Sunday, these being unassigned days.

There was only one position of Serial Record Clerk in the operation at Clifton Forge, Virginia, that being the Monday to Friday, 7:00 A.M. to 3:00 P.M. assignment. Mrs. Annie R. Marshall was regularly assigned to this position, the number of which was A-146, and Mrs. Marshall's regularly assigned duties were to maintain the serial record book through a recording therein of information required in connection with the movement of trains and cars through the Clifton Forge terminal.

On Monday, January 15, 1951, the Carrier did, on account of heavy business and the work being behind on the serial record book, work this job

Attention is called at this point to the fact that Rule 35 (b) does not read verbatim of Section 3 (i) of the March 19, 1949, agreement. This is explained by the fact that the employees requested and the carrier agreed to substitute the words "cut-off (furloughed)" for "extra and unassigned." The carrier understood that this was limiting in some measure the extra or unassigned employees who could be used under the rule, but it is plain that this action in no way impaired the basic rights of the carrier under the provisions of the March 19, 1949, agreement.

In conclusion, there are no rules of the current clerical agreement requiring the working of employees on an overtime basis as contended in this claim. Just the opposite is true; the rules themselves show that the parties understood and intended that extra positions or days would be worked as conditions required. The claim in this case seeks to force an unjustifiable economic situation upon the carrier as well as one not contemplated by the collective bargaining rules.

All of the data contained in this submission have been discussed in conference or by correspondence with the employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to Docket CL-6064 and the principles enunciated in our Award No. 6036 are applicable here.

On the factual question as to whether a new position was properly established or whether the claimant had a preference to overtime work under Rule 35 we note that Carrier's superintendent in rejecting claimant's time ticket said:

"Referring to your ticket of January 15, 1951, claiming one day at the punitive rate account not used for emergency work on that day, Clifton Forge, Va.

"On January 15, 1951, you were regularly assigned as Serial Record Clerk, keeping the serial record book in the Clifton Forge Yard Office, which position is assigned on one trick only, 7 A.M. to 3 P.M. You worked this assignment on January 15, 1951, but on account of heavy business and the work being behind it was necessary to work this job from 11 P.M., January 15, to 7 A.M., January 16, John H. Gleason, extra clerk who holds no seniority, was used on this position, he being called according to Rule 35 (b) of Revised Agreement No. 7 covering clerical employees."

Since the extra clerk who performed the work was called under the very rule which gives claimant a preference to the work we think the claim must be sustained.

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

The Agreement was violated.

AWARD

Claim (a) sustained. Claim (b) sustained for January 15, 1951, and subsequent dates on which the factual situation was identical.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1953.