Award No. 6387

Docket No. CL-6327

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) A. W. Kruse, 2nd Overcharge Investigator, rate $292.82, be allowed 3½ hours per day at time and one-half, May 7, 1948 to and including October 7, 1949.

(2) P. E. Haney, 3rd Overcharge Investigator, rate $292.82, be allowed two hours per day at time and one-half, May 7, 1948 to and including October 7, 1949.

(The above rates are the rates in effect May 7, 1948, and general increase effective since that date should be added.)

EMPLOYES' STATEMENT OF FACTS: May 7, 1948, the Auditor of Freight Overcharge Claims transferred work from bulletin positions of Overcharge Investigators to positions of Chief Clerk designated as (b-2).

The Chief Clerk is an appointive and supervisory position designated as (b-2) and was not subject to overtime rules at the time of this violation. The duties of the Chief Clerk on the appointive position was to supervise the entire office of the Auditor Freight Overcharge Claims.

The 2nd and 3rd Overcharge Investigator positions, as previously stated, are bulletin assignments, two of five similar positions in that office, the duties of which comprise the investigating and handling of overcharge freight claims from the time filed against the carrier by the patrons and final disposition thereof approving for payment or the declination thereof, answering tracers and conducting correspondence with the patrons and making distribution adjustments of the corrected revenue between the participating carriers.

provisions of the rule proves the correctness of the above statement. First, it will be noted that the rule refers to "employes subject to overtime rules." Here the rule indicates an awareness of the fact that the excepted positions are not governed by the overtime rules and prohibits the practice of assigning routine work to those positions to the detriment of the occupants of positions subjected to overtime rules. We point out also, that the rule here refers to, ". . . occupants of positions designated as (b-1) or (b-2) will not be required to perform . . . outside regular assigned office hours", again indicating a provision for the protection of those occupants of positions subjected to overtime rules (B-1 and B-2 positions were paid a monthly rate and the assignment of work, not their specific duties, could be performed outside the hours of assignment by them without the payment of overtime were it not for the provisions of Rule 1 (j)). Secondly, the examination of the rule reveals that it deals with "routine clerical work". Surely, the review of claims, the finding out why claims have not been paid and in those instances answering the claimants, cannot be classified as routine clerical work, but are clearly a part of the Chief Clerk's (in this case) supervisory duties.

Before concluding our Submission, we wish to call attention to the fact that the original claims filed in the dispute were dated October 5, 1949. Therefore, although it is our basic position that the Chief Clerk, whether he occupied a B-2 or B-3 position, could perform this work, we say the claim is invalid because at the time the claim was filed the Chief Clerk's position was a B-3 position subject to all the overtime rules of the agreement. (This was discussed in the forepart of our Submission). The Claimant's attempt to make the claim filed retroactive is hereby challenged; we have no record in any of our files of an earlier claim regarding that work. We further question the propriety of the instant claim as it compares to the original claim. It is noted that the original claim (Page 1 of this Submission) does not show the date the alleged violation began nor does it specify the amount of time claimed while the instant claim is for work performed from May 7, 1948 to and including October 7, 1949 and is for three and one-half hours per day at time and one-half for one claimant and two hours per day at time and one-half for the other. We question the basis of the Organization's arrival at the amounts claimed and also the dates of the origination of the claim. No claims prior to October 5, 1949 were discussed on the property.

Returning now to the merits of the case, we find that we have proved that the claim is entirely lacking in merit and as a result should be denied.

Inasmuch as there has been no violation of the agreement, the Carrier respectively petitions the Board to deny the claim. (Exhibits not reproduced.)

OPINION OF BOARD: The Employes claim a violation of Rule 1 (j):

> "Occupants of positions designated as (b-1) or (b-2) will not be required to perform routine clerical work, which is not part of their assigned duties, outside regular assigned office hours for the purpose of avoiding payment of overtime to employes subject to overtime rules. This shall not operate to prohibit (b-1) or (b-2) employes in an office or station assigned to report on Sundays and holidays, from handling wires, passes or other similar items."

This rule says essentially that occupants of (b-1) or (b-2) positions will not be required to do clerical work, not a part of their assignment, **outside regular assigned office hours,** to avoid paying overtime to others.

From the facts at hand we do not find that the Chief Clerk did the work of the Overcharge Investigators outside regularly assigned office hours, and we accordingly are of the opinion that there has been no violation of the rule depended upon.

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 there has been no violation of the cited rule.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 28th day of October, 1953.