

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**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when on November 6, 1951, and continuing for a period of twenty-one working days it employed four typists and two comptometer operators having no seniority or previous employment relationship with the Carrier to perform work previously assigned to Clerks holding positions covered by the Clerk's Agreement. No new positions were established under the Clerk's Agreement and no vacancies existed in established positions; and

(b) That claimants J. R. Betsill, W. W. Irwin, W. D. Sexton and J. M. Eidson, qualified typists, shall be compensated in the amount of twenty-one days each at pro rata rates, representing a proportionate part of the time worked by the four typists not covered by the Clerk's Agreement; and

(c) That Clerks K. I. Yarbrough, J. Allen, E. H. Manley, N. M. Dodd, L. A. Goward, P. H. Wright, John Hicks, Jr., J. R. Boyette and L. C. Eidson, qualified comptometer operators, shall be compensated in the amount of thirty-seven hours twenty minutes each, at pro rata rates representing a proportionate part of the time worked by the two comptometer operators not covered by the Clerk's Agreement.

EMPLOYES' STATEMENT OF FACTS: Claimants are regularly assigned Group 1 employees employed in and holding seniority in seniority district comprising Office of Assistant Auditor, Atlanta, Georgia. Their seniority dates, assignments and rates of pay are as follows:

Name	Position	Seniority Date	Rate Per Day
J. R. Betsill	Clerk	Oct. 1, 1948	\$14.44
W. W. Irwin	Clerk-typist	June 1, 1950	12.50
W. D. Sexton	Addressograph Operator	Nov. 20, 1950	12.91
J. M. Eidson	Clerk	Feb. 2, 1949	14.44

All relevant facts and arguments involved in this dispute have heretofore been made known to employe representatives.

OPINION OF BOARD: The submission of the Carrier contains the following statement:

"Carrier agrees that the extra positions should have been bulletined, either within two days as provided in Rule 5 (e) or after the extra clerks had worked the positions four or more days a week for two consecutive weeks as provided in Rule 4(h)."

The Carrier then contends that it nevertheless had the right to use extra clerks to fill new positions if bulletined and that claimants suffered no monetary loss.

Under the agreement, Rule 4(g), preference for extra clerical work must be given to available qualified furloughed employes and, Rule 4(g) (10), when lists of furloughed employes are exhausted "extra clerks may be employed." Rule 4(h) then provides as follows:

"Nothing in this rule shall be construed to prevent the carriers from using furloughed or extra clerks for one day or more where on certain days the conditions of the service warrant their use; payments to be made for actual number of days worked, provided that, if extra clerks are used on the same position four days or more for two consecutive weeks, a regular position shall be established; such position to be abolished when the condition of the work warrants . . ."

Thus under the rules, where no furloughed employes are available and extra clerical work is required, the Carrier may employ extra clerks for "one day or more" with the proviso that if used on the same position for "four days or more for two consecutive weeks" a regular position shall be established. Since Carrier concedes that such a position, when established, must be bulletined, the effect of failure to do so is that thereafter work has been given to one not entitled to it under the agreement, which we have consistently held validates a claim of pay for one covered by the agreement with a seniority status entitling him to the work.

Thus we find that, since Carrier had a right to employ extra clerks on the same position for two consecutive weeks of four days or more before it was required to establish a new position requiring bulletin, the claim is valid for all days worked by such extra clerks thereafter and to that extent will 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 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

The Carrier admits it violated the agreement.

AWARD

Claim sustained to the extent stated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.