

Award No. 6686
Docket No. CL-6502

**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 DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

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

(a) The Carrier violated the Clerks' Agreement when it forced Clerk Marshall Stone to leave his regularly assigned position in the Scranton Enginehouse on May 6, 1951, and work another position in the same office, and:

(b) Claim that the Carrier shall now reimburse Clerk Marshall Stone at the rate of his regularly assigned position, an additional day's pay, by reason of his being withheld from his regular assignment and forced to work another position on May 6, 1951.

EMPLOYEES' STATEMENT OF FACTS: Clerk Marshall Stone entered the services of the Carrier on 1-31-37 and established a seniority date under Rule 23 in the Carrier's Scranton, Penna., Enginehouse Seniority District in the Motive Power Department as of 1-31-37.

On 1-22-49, in line with the provisions contained in Rule 39, the Claimant exercised his displacement rights to a position in the Scranton Enginehouse Seniority District, titled:

Position	Clerk
Hours of Service	8 AM to 4 PM.
Rate of Pay	\$12.306 per day
Rest Days	Monday and Tuesday

Regularly Assigned Duties:

Get train line-up
Check Engineer and Firemens Time Tickets
Take all Engineers' reports. Check and file same
Make out valve pilot report

"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." (Emphasis added).

(Award 5331—Third Division)

"The carrier is not obliged to point to any rule, as petitioner contends, that **permits** the challenged assignment. Conversely, the burden is on the petitioner to show that carrier has surrendered or **limited** its basic management functions by the use of language in some rule that is **susceptible of no other interpretation**. (Emphasis added).

(Award 15119—First Division)

Finally, the Claimant must not only show a rule "susceptible to no other interpretation" but also prove the **facts** under which he claims the rule was violated by substantial evidence.

The Carrier cannot anticipate at this time what will be contained in the Organization's submission, and reserves the right to refute anything contained therein, whether argumentative or evidential.

All data in support of the Carrier's position have been submitted to the Employees on the property.

The claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is based upon Rule 5 which reads as follows:

"Employees will not be required to suspend work during regular hours to absorb overtime."

In Award No. 2346 involving an identical rule we said that "in the absence of proper showing on the part of the Carrier that avoidance of overtime was not the motivating cause, it may be assumed that it was". There this Board established a presumption and has consistently followed that theory and relied upon that presumption in subsequent awards. In Award No. 5625 we properly said that our presumption disappears in the light of evidence upon the matter.

Likewise in our Awards Nos. 4499, 4641, 4690, 4692, 5115, 5578, 6015 and 6308 we stated in effect that we would not indulge in that presumption of ours if employees were required to suspend work on their regular jobs in emergencies. We think that is a proper holding.

Thus we must examine the evidence in each case to see whether an emergency existed and what was the motivating cause of Carrier's action in requiring employees to suspend work on their regular jobs. Here the evidence shows that the cause for such action was that the relief clerk at the Scranton Enginehouse reported off sick. We think that created an emergency. See Award No. 6015.

In this docket the evidence discloses that the "motivating cause" for the suspension of claimant from his regular position was to fill the vacancy so created by using an extra clerk who was not qualified for the relief clerk position but was qualified to fill claimant's position. Such use of an extra man rather than the use of a regular man on his rest days is in accord

with the stated purposes of the 40 hour week agreement. Under such circumstances the evidence does not show that claimant was suspended from his regular position to absorb overtime so the claim must fail.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1954.