

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the Agreement at Mansfield, Ohio, when it required Ticket Clerk Ralph A. Gray to check the yards on Saturdays and Sundays, September 23, 1950 to October 8, 1950, instead of using Demurrage Clerk Willard R. Foss who was regularly assigned to that class of work on Monday through Friday, and

(2) That Willard R. Foss, Demurrage Clerk, be compensated at penalty rate for 14 hours and 30 minutes at the rate of his position, namely, \$11.83 per day, in addition to what he has been paid.

EMPLOYEES' STATEMENT OF FACTS: Willard R. Foss is regularly assigned as Demurrage Clerk, Position No. 75-1-601, at Mansfield, Ohio, hours 7:00 A. M. to 4:00 P. M., Monday through Friday, Rate \$11.83 per day. The Ticket Clerk, Position No. 75-1-621, is assigned 10:00 P. M. to 7:00 A. M., Thursday through Monday, Rate \$11.59 per day. On the following dates, which are Saturdays and Sundays, the Ticket Clerk worked the following amount of overtime to check tracks and do work ordinarily done by Demurrage Clerk:

September 23—	2 hours 20 minutes
September 24—	2 hours 30 minutes
September 30—	2 hours 15 minutes
October 1—	2 hours 35 minutes
October 7—	2 hours 30 minutes
October 8—	2 hours 20 minutes

POSITION OF EMPLOYEES: Willard R. Foss is regularly assigned to Demurrage Clerk Position and Ralph A. Gray is regularly assigned to Ticket Clerk position at Mansfield, Ohio. On each Saturday and Sunday beginning with September 23, 1950 and ending with October 8, 1950 the Carrier instructed Ticket Clerk Gray to start at 7:00 A. M., after completion of his tour of duty as Ticket Clerk, and make a track check for demurrage purposes, which work is attached to the duties of the Demurrage Clerk from Monday through Friday. The position of Demurrage Clerk works regularly in the freight office while the position of Ticket Clerk works about one-half time

In conclusion it should be stated we have read and given consideration to all of the numerous awards relied on by Claimant in support of the claim but have decided that it would merely encumber this opinion to no useful purpose to analyze and distinguish them. It suffices to say that when carefully examined it appears such awards deal with factual situations so different from the one here involved that they are clearly distinguishable and hence are of no value as precedents when applied to the controlling facts of this case."

The claim in Award No. 6023 was denied.

In view of the above the Carrier asserts that the claim made here is essentially without merit and respectfully requests this Division to deny it.

In accordance with the requirements contained in this Division's Circular No. 1 issued October 10, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to, or is known by, the other party to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned as Demurrage Clerk at Mansfield, Ohio, 7:00 A. M. to 4:00 P. M., Monday through Friday, with Saturday and Sunday as rest days. One Gray occupies a Ticket-Clerk position, 10:00 P. M. to 7:00 A. M., Thursday through Monday, with Tuesday and Wednesday as rest days. Carrier used Ticket-Clerk Gray to check the yards on certain specified Saturdays and Sundays. The Organization contends the claimant should have been used and claims reparations for him for the work lost.

The Organization asserts that the work done on an overtime basis belonged to Claimant as Demurrage Clerk and not to Gray, the occupant of the Ticket-Clerk position. Rule 3 (b-2), current agreement, is relied on. It states:

"Where work is required by the Management 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 (40) hours of work that week; in all other cases by the regular employee."

The Demurrage Clerk occupied a 5-day position. The Ticket-Clerk was assigned 5 days' work on a 7-day position. The record does not indicate any staggering of the regular work weeks of these two employees. The track checks here involved were incidental to the work of the Demurrage Clerk. It was overtime work of the Demurrage Clerk's position. It was not assigned to any position. There was no extra or unassigned employee available. It belonged to the Demurrage Clerk, the regular employee. His claim is therefore valid at the pro rata rate, it being the rate applicable for work lost.

It is the contention of the Carrier that these two positions could be staggered because they were of the same craft, in the same seniority district, carried on the same seniority roster, were in classes having common seniority, and were qualified to perform the work here involved. Award 6946. If the Demurrage Clerk's position was a 5-day position as the record indicates, there was no regular work of that position on Saturdays or Sundays to stagger. In any event, the record does not indicate that the Ticket-Clerk was assigned to perform any of the duties of the Demurrage Clerk on Saturdays and Sundays as permitted by Award 6946 if it was a six or seven day position. The joint statement of facts states that the Ticket-Clerk "worked the following amount of overtime to check tracks and do work ordinarily done by demurrage clerk." The work was clearly overtime work as distinguished from the filling of an unassigned rest day position which of necessity would have been for 8 hours.

Carrier relies strongly on Award 6023. In that case, the positions could be staggered under our subsequent holding in Award 6946, and the Saturday work of the Rate and Billing Clerk could and was properly assigned to the Ticket-Clerk position. We agree with the holdings of that award but it has no application here. There was no Saturday or Sunday demurrage clerk work assigned to the Ticket-Clerk during his regular tour of duty. The record is not disputed that after completion of his tour of duty as Ticket-Clerk, the latter was instructed to make a track check for demurrage purposes. It was overtime work incidental to the Demurrage Clerk's position and had no relation to the work assignment of the Ticket-Clerk.

The claim that the appeal to this Board was taken out of time has no merit. There is no limitation as to time, contractual or otherwise. The claim of laches also is without merit. There is no evidence that Carrier has been prejudiced by the claimed excessive delay.

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

That the Agreement was violated.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.