

Award No. 7039

Docket No. CL-7019

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

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**PARTIES TO DISPUTE:**

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

**GEORGIA RAILROAD**

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

**Claim No. 1:**

(a) Carrier violated the effective Agreement between the parties when, on July 16, 1952, and subsequent thereto, it required Claimant J. C. Evans to suspend work on his regular assignment of stock clerk and perform the duties of a vacant position of clerk-caller, for the purpose or having the effect of absorbing overtime, and

(b) Carrier violated the effective Agreement between the parties when, on August 27, 1952, it issued Bulletin No. 2243, allegedly "abolishing" position of stock clerk regularly assigned to Claimant J. C. Evans, and

(c) As a penalty for the violation, Carrier shall now be required to pay Claimant J. C. Evans, an additional day's pay at the pro rata rate of his regularly assigned stock clerk's position for each day, from July 16 through September 15, 1952, that he was required to suspend work on his regularly assigned position for the purpose of filling a short vacancy on a clerk-caller's position, which had the effect of absorbing overtime, and

(d) Carrier shall now pay Claimant the difference between the rate of his regularly assigned position and the rate received on the lower rated position of clerk-caller for each working day from September 1, through September 15, 1952, and

(e) All other employees adversely affected by the violation enumerated in (a) and (b) above shall be compensated for any and all loss of earnings sustained as a result of the violations.

**Claim No. 2:**

(a) Carrier violated the effective Agreement between the parties on September 1, 1949, and the violation continued up to the

time claim was presented and thereafter, when it assigned a work week of Thursday through Saturday to a 5-day position of stock clerk, for the purpose of furnishing relief on a 7-day position of clerk-caller, which had the effect of suspending work on Mondays, which should have been a regularly assigned work day, the effect of which was to absorb overtime on Saturdays, and

(b) As a penalty, Claimant J. C. Evans shall now be compensated an additional day's pay at the pro rata rate of his regular position for Monday, March 16, 1953, and each Monday subsequent thereto that he was required to suspend work on his regularly assigned position of stock clerk, which had the effect of absorbing overtime, claim to continue until the condition complained of has been corrected.

**EMPLOYEES' STATEMENT OF FACTS:** The locale of this dispute is Augusta, Georgia, where Carrier maintains two separate and distinct departments, involving its storeroom operations and crew calling operations. Employees employed in both departments are covered by the Clerks' Agreement and shown on Mechanical and Stores Department seniority roster, District No. 2. Employees' Exhibit "A" attached hereto, shows that there were 11 employees on the roster when it was published on July 1, 1952.

Prior to the 40-Hour Week Agreement, effective September 1, 1949, the Stores Department was operated 6 days per week and the crew calling was performed 24 hours per day, 7 days per week. Subsequent to the 40-hour week, the Stores Department was reduced to 5-day operations, Monday through Friday, while crew calling was continued on a 24-hour basis 7 days per week. For the purpose of furnishing relief on the three 7-day positions of crew caller, Carrier established a regular relief assignment under Rule 34(e) to relieve on five of the six rest days, which left one tag-end rest day unassigned.

For the purpose of evading the expressed provisions of Rule 38(f), in the performance of work necessary on tag-end rest days, Carrier rearranged a 5-day position of stock clerk by assigning a work week of Tuesday through Friday as stock clerk and clerk-caller on Saturday.

Under date of June 16, 1952, the position of "stock clerk" was advertised for bids on Bulletin 2211 (Employees' Exhibit "B"), reading in part as follows:

"Title	Stock Clerk
Location	Storeroom
Rate of Pay	\$309.31
Hours of Assignment	7:30 A. M. to 4:00 P. M., Tuesday through Friday. 8:00 P. M. to 11:00 P. M., Saturday
Assigned Meal Period	12:30 P. M. to 1:00 P. M.
Days of Assignment	
Each Week	Tuesday through Saturday
Days Off Duty Each Week	Sunday and Monday
'Continuous Operation Job'	No
Vacated By	W. E. Storey
Account of	Resigned
Brief Description of Duties	Preparation of records and reports of receipts and disbursements, maintenance of stock, shipping and inventory records, identification, assortment and classification of materials and other kindred work assigned including assignments as Crew Caller and other duties on Saturday."

**OPINION OF BOARD:** Claim No. 1.

It appears that a regularly assigned clerk-caller was sick and unable to fill his position on July 16, 1952 and subsequent days. Since it was not then known how long he would be off duty, it was treated as a short vacancy and claimant was temporarily assigned to that position and paid the higher rate of his regular position.

Such temporary assignment is in full accord with the provisions of Rules 8 and 20 (b) and claimant was properly paid under Rule 40 (i). No overtime being worked or needed, Rule 38 (k) is not applicable to that situation.

When it was subsequently ascertained that the absent clerk-caller could not return to work within 30 days, Carrier's supervisor sought agreement by the Division Chairman to a continuation of that temporary arrangement. He declined to agree. The vacancy was then bulletined and claimant's regular position was abolished, which had the effect of requiring claimant to bid in the vacancy. The abolishment was handled in accordance with Rule 14 and since thereafter the rules did not require that claimant be paid any more than the rate of the clerk-caller position to which assigned, we find no violation of the agreement in the actions taken. Hence Claim No. 1 must be denied.

## Claim No. 2.

Carrier required three 7 day clerk-caller positions at Augusta, Georgia. When the 40-Hour Week Agreement became effective September 1, 1949, it hired a clerk-caller and established a relief position to cover five of the six rest days of those three positions. It also established by bulletin a position relieving the second trick clerk-caller position on Saturday and working as stock clerk Tuesday through Friday.

Rule 34 (e) provides for the establishment of regular relief assignments "to perform relief work on certain days and such types of other work on other days as may be assigned under individual agreements". In our Awards No. 6969 and 6979 we held that similar agreement provisions clearly and specifically authorized the establishment of relief positions such as that involved here. Thus the claim is without merit.

**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 Employee involved in this dispute are respectively carrier and employee 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 No. 1 and Claim No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.