

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**

**NORFOLK AND WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the carrier violated the Clerks' Agreement:

1. When on February 15, 1950, as a result of the abolishment of clerical position, Foreman's Office, Motive Power Department, Eckman, W. Va., it assigned the former incumbent A. C. Yost, to temporary vacancy, 3:00 P.M. to 11:00 P.M., Roundhouse Office, Motive Power Department, Bluefield, W. Va., period of February 15 to and including March 2, 1950.
2. When during period February 24 through March 2, 1950, inclusive, it required Clerk A. C. Yost to suspend work on his regular assignment, 11:00 P.M. to 7:00 A.M., Roundhouse Office, M. P. Department, Bluefield, W. Va., and assigned him to position of Roundhouse Clerk, M. P. Department, Bluefield, W. Va., 3:00 P.M. to 11:00 P.M.
3. That Clerk C. E. Sarver shall now be reimbursed for all wage loss suffered account not being assigned to temporary vacancy on 3:00 P.M. to 11:00 P.M. Roundhouse Clerk's position, M. P. Department, Bluefield, W. Va., period of February 15, through March 2, 1950, inclusive, except days of rest of the position (Monday and Tuesday).
4. That Clerk A. C. Yost shall now be paid an additional day of eight (8) hours at pro rata rate \$274.17 for each date, except days of rest (Wednesday and Thursday), February 24 through March 2, 1950, inclusive.

**JOINT STATEMENT OF FACTS:** R. T. Fields, who held Class 1 clerical seniority date of July 1, 1918, was regularly assigned as clerk, rate of pay \$274.17 per month, in the Roundhouse Office at Bluefield, West Virginia, from 3:00 P.M. to 11:00 P.M., Wednesday through Sunday, with rest days Monday and Tuesday. His rest days were filled by a regularly assigned relief clerk. Starting February 8, 1950, Clerk Fields was absent account sickness. This created a temporary vacancy in his position. There was no extra or furloughed clerk available to fill this temporary vacancy. The temporary vacancy was filled February 8, 9, 10, 11 and 12th by regularly

## PART III

## CLERK A. C. YOST'S CLAIM:

In support of the claim in behalf of Clerk Yost the Employees rely upon Rule 31 reading:

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

In Award 5105 your Board stated there were three questions which must be given consideration in determining whether a rule such as Rule 31, above, has been violated. The three questions were:

"First, whether the employee involved was the holder of a regular assigned position and required to suspend work on that position during its regular hours. Second, if the first question is answered in the affirmative, whether such employee was required to suspend work for the purpose of absorbing overtime. And third, if the record requires affirmative answers to questions one and two, whether the current Agreement contains any exceptions or limitations susceptible of a construction the plain provisions of such rule have been superseded or rendered inoperative."

As shown in the Joint Statement of Facts, "Clerk Yost did not take over the assignment on which he had displaced on February 24th but continued to fill the temporary vacancy in Clerk Fields' position through March 2, 1950." Yost made a written application to displace Clerk Shields on the third trick roundhouse clerical position, but the displacement never did become actually effective. In view of the fact Yost "did not take over the assignment" it cannot be properly said he was the "holder" of the third trick position from February 24th to March 2nd, inclusive. As a matter of fact, Yost was holding the second trick roundhouse clerical position in place of Clerk Fields as authorized by Rule 10 (g). Third, and Shields continued to hold the third trick roundhouse clerical position during the period of the Yost claim. As previously stated in Part II of this submission, there is no rule that required the immediate transfer of Yost to the third trick position to make him the "holder" of that position. Furthermore, under Rule 15 (d) "An employee will not be considered as having been displaced until the individual exercising seniority actually begins work on the position," Clerk Shields was the regularly assigned incumbent, or "holder", of the third trick position until such time as Yost would have begun work on the position. Such, of course, never occurred. Not having been the holder of the third trick position it follows that Yost was not "required to suspend work on that position during its regular hours". Further, Yost was not required to suspend work on the second trick position he was holding during the period of the claim. There was no "absorbing overtime" in the instant case. With abolishment of Yost's position at Eckman there was sufficient force to handle the work in the Roundhouse Office at Bluefield without working overtime. (See Third Division Award 6318.) Under the circumstances, the first and second questions above quoted require negative answers, and according to the above quoted formula there was no violation of Rule 31.

Denial of Mr. Yost's claim is requested.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On and after February 8, 1950 Roundhouse Clerk Field was unable to work his assignment account of illness. No extra or furloughed employee being available, C. E. Sarver, a regularly assigned relief clerk, was used to fill the vacancy on an overtime basis as well as working his own assignment.

Due to a work stoppage in the coal mines the carrier abolished a Shop Clerk position in the same seniority district occupied by A. G. Yost, effective

February 15th. Yost was then used to fill the vacancy in Field's position. Under Rule 15 (b) he had ten days to exercise his seniority to displace a junior employee. On February 24th he filed application to displace Roundhouse Clerk C. A. Shields, but continued to be used on the same temporary vacancy. On the same day that temporary vacancy was bulletined and Yost bid for it. He was assigned thereto on March 3, 1950.

The first issue arises from the contention of the Organization that Yost was improperly used to fill the temporary vacancy on Field's position. Rule 10 (g) governs the filling of temporary vacancies without bulletining. It provides for filling them, first, from the extra board, second, by furloughed employees, and third, if not so filled, "Management shall have the right to select the persons whom, in its own judgment, it considers best qualified to fill such temporary positions or vacancies".

The organization contends that the word "persons" does not apply to employees. Certainly persons is a broader term than employees but all employees are persons. It was thus that Sarver was first selected to fill the temporary vacancy because no other rule applied thereto and by Rule 32 (f) the rules governing authorization of overtime are specifically made inapplicable to temporary positions or vacancies. Consequently we conclude that the carrier had the right to select Yost to fill the temporary vacancy involved.

Another issue arises from the contention of the organization that, from February 24 to March 2, Yost was the holder of the position upon which he made application to displace Shields and was suspended therefrom to absorb overtime in violation of Rule 31. It clearly appears that if Yost had displaced Shields on February 24th then Shields would have been available to fill the temporary vacancy held by Yost at pro-rata. Thus there could be no absorption of overtime since none was required and Rule 31 is inapplicable.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 4th day of August, 1955.