

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 January 7, 8, 9 and 12, 1953, it removed Claimant, Mr. H. R. Turner, from his regularly assigned position of Storehouseman and required or permitted him to perform the duties of Clerk for three (3) hours on each date aforesaid for the purpose or having the effect of absorbing overtime.

(b) The Carrier violated the Agreement when, on the dates aforesaid, it required Storehouseman, Mr. P. F. Enterkin, to suspend work on his regularly assigned position and perform the duties of the position regularly assigned to Storehouseman, Mr. H. R. Turner, for the purpose or having the effect of absorbing overtime.

(c) The Carrier violated the Agreement when, on the dates aforesaid, it failed and declined to assign overtime clerical work to the occupant of the position on which overtime work was necessary, viz: Mr. H. E. Karr.

(d) The Carrier shall be required to compensate Claimants H. R. Turner and P. F. Enterkin, in addition to what they have been paid, at their pro rata rates for three (3) hours on January 7, 8, 9, and 12, 1953.

(e) Claimant H. E. Karr shall be compensated at proper rate of time and one-half for three hours on each day on January 7, 8, 9 and 12, 1953, when he was denied the right to work overtime necessary on the position to which he was regularly assigned.

EMPLOYEES' STATEMENT OF FACTS: On the dates encompassed in the Claim, Claimant H. R. Turner, seniority date April 16, 1943, was regularly assigned to position of Storehouse Man. Claimant Enterkin, seniority date June 2, 1941, was regularly assigned to position of Storehouse Man. Claimant Karr, seniority date January 12, 1951, was regularly assigned to position of Clerk-Stenographer.

For the work performed by Mr. Enterkin on the above dates, he was paid as provided in Rule 46 (a). Thus it is obvious that Enterkin likewise was not involved and suffered no monetary loss whatever by reason of the work performed by Turner.

In presenting claims involving money payments, it must be shown that the Carrier violated some rule or provision of the effective agreement which deprived claimants of compensation they would have earned had the agreement been properly applied. In the case now before the Board, the Carrier has shown by conclusive evidence that (1) the work performed by Storehouse Man Turner on January 7, 8, 9 and 12, 1953, was incident to his assigned duties as storehouse man, (2) there was no violation of the agreement as alleged, and (3) claimants were properly compensated under the rules of the agreement for the service performed by them on the dates in question.

For the reasons set forth, the claims are not valid and should be denied. Carrier respectfully requests that the Board so hold.

All pertinent facts here involved have been made known to employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is presented to the Board as an alleged violation of Rule 30, reading as follows:

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

Claimants Turner and Enterkin were holders of Storehouse Man, Group 4 positions; while Claimant Karr occupied a Clerk position, Group 1.

The basis of the claim is that: (1) Claimant Turner was improperly suspended from his position on three hours of each of the enumerated dates and assigned to the performance of clerical duties in "cross-indexing" new "original" stock sheets from old "original" stock sheets. (2) That Claimant Enterkin was suspended from his Storehouse Man position and required to perform the work of Claimant Turner's position. (3) That Claimant Karr was denied overtime work of his clerical position account of Claimant Turner being required to perform work exclusively accruing to clerical positions.

The work involved here concerns stock sheets which have distinguishing item numbers. One set of these stock sheets is retained in the Clerk's office while another set (a copy) thereof is assigned to the Shop Storehouse. New stock sheets were being utilized, and sheet, line and item numbers were being "cross-indexed" from the old to new sheets. Just prior to the time in question Claimant Karr, regularly assigned as Clerk, Group 1, was engaged in a part of this "cross-indexing" on one set of stock sheets. Likewise, just prior to the time in question, Claimant Turner, while filling a Clerk vacation vacancy assignment, performed some "cross-indexing" on this same set of sheets.

On the dates in question Claimant Turner after returning to, and while working his regular assignment, completed cross-indexing the set of stock sheets that had been worked on by him while filling the Clerk vacation vacancy assignment, and by Claimant Karr.

It is asserted that Claimant Enterkin was improperly suspended from the duties of his regularly assigned Storehouse Man position and performed those of the position regularly occupied by Claimant Turner.

The petitioner's claim is grounded on the premise that the "making up" of the "original" of these stock sheets is and has always been the exclusive work of Clerk, Group 1, positions.

Respondent here contends that the making up of the stock sheets "original or otherwise" is, and can be required of Storehouse Men inasmuch as their sole purpose is to facilitate Storehouse work. It is asserted that the duties of Storehouse Men include all those which pertain to the upkeep and maintenance of stock therein, which of itself precludes the work in question from being classified as belonging exclusively to clerks.

Once again the confronting claim involves the proper interpretation and application of the Absorption of Overtime Rule and once again the decision of this Board must be based on a question of fact.

A careful scrutiny of this record reveals that the "first or original" set of stock sheets has been kept in the Clerk's office while a "second or duplicate" set of sheets is assigned to and kept in the Storehouse. It is only the initial preparation of the "first or original" set of sheets that here concerns the Board.

It is asserted by the petitioner, and not refuted by the carrier, that in the past all initial work on stock sheets had, as a matter of universal custom and practice, been assigned to Clerks and had been considered exclusive Clerk's work. The work on this set was started by Claimant Karr, a regularly assigned Clerk, and by Claimant Turner, then a temporarily assigned Clerk.

We are of the opinion that these facts conclusively show that the work was considered to be exclusive to the clerical (Group 1) positions. When Claimant Turner completed the work on this set of sheets he was performing clerical work. In this instance the kind and character of the work, not the place of its performance, is controlling. For the time in question he was entitled to be paid the rate for clerical work on a pro-rata basis. If he was not, he should have been. To that extent his (Turner's) claim is valid.

Claimant Enterkin was a Storehouse Man. During the hours in question he performed only Storehouse work and was unquestionably paid the rate for the highest class of work so performed. The work of Turner's assignment did not belong to him (Turner) to the exclusion of all other assigned Group 2 employes. Turner's position was properly assignable to Enterkin. His claim is without merit.

The claim of Karr, regularly assigned Clerk, Group 1, that he was declined overtime clerical work under existing facts will now be considered. While the work in question was clerical work, the facts of record here will not sustain a contention that overtime work would of necessity have been performed on an overtime basis; instead an almost irrefutable presumption exists that the work would have been held over and assigned for performance on a straight time basis. The work was not of a kind or nature that necessitated it being expedited. The claimant failed to show otherwise. The claim of Employee Karr 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 Employees 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 violated the effective agreement to the extent indicated in the above opinion.

AWARD

All claims disposed of in accordance with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1955.