

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch—Referee

PARTIES TO DISPUTE:

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

**POTOMAC YARD (of the) RICHMOND, FREDERICKSBURG AND
POTOMAC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks Agreement, dated September 1, 1951.

(1) When on May 21, 1954, the Carrier required Clerk B. D. Mills to suspend work on his regular assigned position in the Machine Room as a Key Punch Operator to assist the Classification Clerk from 12:40 A. M., to 4:00 A. M., a total of three hours and 20 minutes on that day.

(2) When on May 21, 1954, the Carrier required Clerk A. DerTativasion to suspend work on his regular assigned position as additional Classification Clerk to assist the Key Punch Operators in the Machine Room from 5:00 A. M., to 7:00 A. M., a total of 2 hours on that day.

(3) That the Carrier (Potomac Yard of the Richmond, Fredericksburg and Potomac Railroad Company) shall now be required to compensate Clerk B. D. Mills, 3 hours and 20 minutes additional pay at the rate of the Classification Clerk's rate, and also shall be required to compensate Clerk A. DerTativasion 2 hours additional pay at the rate of the Key Punch Operator, and also shall be required to pay all other clerical employees additional, who have been required to suspend work on their regular assigned position to work another position from May 21, 1954 until this case is settled.

EMPLOYEES' STATEMENT OF FACTS: At Potomac Yard, there are the following regular assigned position on the 11:00 P. M., to the 7:00 A. M., shift on the North Hump. (the shift and place that is involved in this suspension of work);

- 1 Chief Machine Operator
- 2 Machine Operators
- 3 Key Punch Operators
- 2 Classification Clerks
- 1 Number Clerk

duties not specifically named may be added without destroying the identity of the position provided they are reasonably appropriate to the position and type of work which it entails and natural and incident thereto." 1316-3.

CONCLUSION

In conclusion the Management respectfully submits that:

(a) No rule in the contract effective September 15, 1951, or supplements thereto, prohibits the utilization of clerical help in the manner outlined.

(b) The rules relied upon by the Brotherhood do not support the claim.

(c) The claim is actually a demand for a new rule by Board decision in a matter the Brotherhood has not been able to work out to their satisfaction through negotiations.

(d) The letter-agreement of January 15, 1952 covers the situation which the Brotherhood is contesting here; in fact, that letter-agreement was a concession the Management was not required to make under the terms of the Agreement of September 15, 1951, but was made in the interest of amicable labor relations and collective bargaining.

The claim should be denied and the Management respectfully requests the Board to so hold.

(Exhibits not reproduced)

OPINION OF BOARD: The incident which led to the claim here before us occurred during the 11:00 P. M.-7:00 A. M., shift at Carrier's Northbound Hump Office at Potomac Yard, which is a facility operated for the benefit of the owning line, the Richmond, Fredericksburg and Potomac Railroad Company; and for the four tenant lines, the Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railway Company, the Pennsylvania Railroad Company and the Southern Railway Company.

The office at Northbound Hump is a continuous 24 hours a day, 7 days a week operation. Carrier states that the positions in existence on the third shift on May 21, 1954 were as follows:

Position	Rate per day	Number
Chief Machine Operator	\$17.64	1
Machine Operator	16.84	1
Key Punch Operator	15.42	3
Classification Clerk	16.84	2
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On that particular day, Carrier asserts it used one additional Classification Clerk on the 11 to 7 shift, who happens to be one of the two identified claimants in this case—A. Der Tativasion and, one additional Classification Clerk and an additional Key Punch Operator on the 7 to 3 shift, plus 2 additional Classification Clerks and one additional Key Punch Operator on the 3 to 11 shift. In the full 3-shift cycle of that day, Carrier used a total of 6 extra clerks.

It is the claim of the Organization that on that date, Carrier required Clerk D. B. Mills to suspend work on his regular assigned position in the Machine Room as a Key Punch Operator to assist the Classification Clerk

from 12:40 A. M., to 4:00 A. M., a total of 3 hours and 20 minutes; and it required Clerk A. Der Tativasion to suspend work on his regular assigned position as additional Classification Clerk to assist the Key Punch Operators in the Machine Room from 5:00 A. M., to 7:00 A. M., a total of 2 hours.

Organization contends these actions were violative of Rule 9 (f), reading:

“Employees will not be required or permitted to suspend work during regular hours to absorb overtime.”

Organization also points out “the stated positions are housed in one building which is divided into two separate offices. One is a Machine Room, where the Machine Operators and Key Punch Operators work under the direct supervision of a Chief Machine Operator, such a position being maintained on each shift. The other is the Yardmaster’s Office, where the Classification Clerks perform their duties.”

Carrier cites the manner in which clerical work is performed at the Northbound Hump Office, by stating that “waybills which arrive with incoming freight trains go first to the Classification Clerks; then to the Agent’s office; then back to the Classification Clerks, then to the Machine Room.”

Carrier argues that a yard which receives trains from 5 different railroads for classification and delivery to other lines obviously cannot always determine in advance just when the freight trains will arrive, and that when trains are behind schedule or arrive at the terminal in “fleets” the clerical work fluctuates and calls for a “lend the hand” procedure to maintain the proper balance in order to keep trains flowing through the terminal, and in such situations “the clerks assigned to the Machine Room very often are waiting for waybills to be processed on the Classification Desk. It is to take care of such situations as that, involving work that must be done with the greatest expedition to avoid delay to traffic, that the clerical force is shifted around to meet our requirements.”

Organization argues that “the sole purpose of taken (sic) these employees off the position (the interchange of employees hereinbefore described) assigned to them was to avoid the payment of overtime. We contend further that there was no effort whatsoever on the part of the night Trainmaster or the Assistant General Yardmaster (who ordered the suspension of work) to obtain a qualified employe for the Classification Clerk’s position, because of the fact that overtime would have to be paid to the employe called.”

Organization avers that Carrier’s inference in the record that employes (claimants) would “sit idle” while other work needed to be performed is well answered by what Referee Munro said in Award 5727, reading:

“In Award 5287, we said it is resonable to say a job will require on an average from day to day the full time services of a fairly efficient employe, we still adhere to that view. We cannot conceive of a Carrier interested in economical and efficient operation of its affairs, as we presume this Carrier is, maintaining positions from which it could direct the holders thereof to perform other than their assigned duties without injury to the assigned duties. * * *”

Organization’s argument continues:

What has been stated * * * also establishes the fact that there was “an accumulation of work” and the Carrier wanted it performed immediately. The suspension of Claimants from their assigned positions to perform the stated work evidences that the Carrier wanted the work done but that the regular employes could not accomplish it during their regular tour of duty. The only way it could have been performed, in accordance with the Agreement, was on an overtime basis by working the clerks in the Yardmaster’s Office after hours, or calling out other yard clerks who were then off duty to perform the accumulated work there. Therefore, regardless of whether

Carrier's action was for the purpose of absorbing overtime "such was the effect."

Carrier, however, maintains "it is not possible to let the work involved in this dispute pile up to a point where it might be made current on an overtime basis. If that were ever attempted, we would have traffic standing in this terminal for the clerical force to bring its work abreast of the actual movement of the equipment. In other words, the group of clerks involved in this dispute are doing work that must be kept current all the time, otherwise we run the risk of allowing a train to come up to the hump for classification at a time when the clerical work has not been completed, and that is a situation that simply cannot be permitted."

Carrier cites many awards of this Division which it believes sustain its position in the instant case, among them **Award 5331 (Robertson)**:

"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. * * *"

Award 6023 (Parker):

"* * * Rule 4-C-1 (the Absorbing Overtime Rule) has no application to a situation where—as here—the work performed by an employee is work which has been properly assigned to his position."

Award 7167 (Carter):

"It is made clear from the record in this case that the original purpose of the absorbing overtime rule was to prohibit a carrier from suspending an employee during his regular assigned hours to equalize or absorb overtime which he had already earned."

Award 7082 (Whiting):

"* * * Claimant worked the assigned hours of his position performing work within the craft and class to which he belonged and was paid the highest rate applicable to either position. He was in no way injured and a claim on his behalf is therefore wholly lacking in merit."

While Organization bases its case on the allegation Rule 9 (f) has been violated, Carrier cites Rule 22 (e) and (f) of the same Agreement as authority for its action. These sections read:

"(e) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

"(f) A temporary assignment contemplates the fulfillment of duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to temporary increase in the volume of work does not constitute a temporary assignment under this section."

Organization had offered the argument that Carrier should have anticipated its needs and called out extra clerks; but because that would have required payment of overtime, which Organization asserts Carrier wished to

avoid, it chose to cause men to be suspended from their regular assignments, to "absorb" overtime.

We must hold, however, that the record shows clearly that Carrier did try to anticipate its requirements because in the 24-hour cycle of May 21, 1954 it did call out six extra clerks—one of them Claimant Der Tativasion. Carrier further shows that the work load did not become acute until 12:40 A. M., one hour and 40 minutes after the start of the third shift; that it is not possible to let work "accumulate to a point where it might be made cuurent on an overtime basis * * * (for) * * * we would have traffic standing in the terminal waiting for the clerical force to bring its work abreast of the actual movement of equipment * * * a situation that simply cannot be permitted."

Three of the sustaining Awards cited by the Organization in support of its position here, all of them involving violation of the Absorbing Overtime rule, are 6732 (Parker), 4352 (Robertson) and 4646 (Connell).

We must hold that such Awards do not sustain Organization here for the following reasons:

In 6732, Organization was upheld because "we are unwilling to say the emergency recognized by our decisions as grounds for disregarding Rule 22 (Rule 9-f here) existed."

In 4352, the applicable Agreement contained a rule permitting Carrier to shift forces to fill short vacancies "heads of Departments and Local Committees will handle in a manner that will cause the least disturbance in office or department"—but this Board found there was "no evidence that such handling was had," hence a sustaining award.

In 4646, the applicable Agreement contained a provision permitting Carrier to make "temporary changes in assignments * * * necessary because of irregularities in train arrivals and departures and volume of business to be handled." So this Board ruled that the illness of employe Shelton did not create the type of emergency cited in the rule quoted above.

In summary we must say, with relation to 6732, that Organization has failed to prove no emergency existed in this case on shift complained of; that (4352) the Agreement here applicable contains no rule which would require Carrier to first resort to Local Committees before shifting forces in the circumstances here obtaining; and the applicable Agreement does not restrict Carrier in making temporary changes in assignments as was the case in 4646. Even if it did, "irregularities in train arrivals and departures and volume of business to be handled" would fit Carrier's case here perfectly.

Carrier cited Award 7642, with the Referee sitting here, which denied a claim of violation of the "absorbing overtime rule." In that case Carrier acted in an emergency situation requiring the meeting of a payroll preparation deadline and we held Carrier exercised "common sense and good management" in arranging the work required to meet the deadline; that Claimant would not otherwise have performed overtime and he was not "injured."

In the instant case we must hold that Carrier exercised its Management prerogatives in arranging its work to meet the service requirements at this particular installation (Award 5331); that Claimants worked the assigned hours of their positions, performing work within their craft or class and were paid the highest rate applicable (Award 7082); that Organization has failed to prove that the "accumulation of work" involved could have been subsequently performed at overtime without injury to the service Carrier is required to maintain; that Claimants here were not "injured" (Awards 7082, 7642); that Carrier's action in assigning duties to Claimants Mills and Der Tativasion on the shift in question was not for the purpose of "absorbing overtime" and that Organization has failed to prove that Carrier's action was violative of the applicable agreement.

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 not violated.

AWARD

Claims (1), (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1957.