

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

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

(a) The Carrier violated the terms of the Clerks' Agreement when at Russell, Kentucky, on September 17, October 1, 15 and 29, December 3, 17 and 31, 1949, January 14 and 28, 1950, and thereafter, it removed the duty of delivering and accounting for employes' pay-checks from position No. A-7, Boiler Inspection Clerk, to evade assignment of overtime; and

(b) Mr. William R. Hurt, regularly assigned to such class of work, be paid one minimum day at the rate of time and one-half times the straight time daily rate of \$12.13 (plus subsequent adjustments) for each of the dates specified above and for each subsequent date violation continues until correction is made.

EMPLOYEES' STATEMENT OF FACTS: Mr. William R. Hurt, here Claimant, is employed as Clerk by the Carrier in its Mechanical Department at Russell, Kentucky, with seniority dating from July 16, 1942. His regularly assigned position is known as position No. A-7, Boiler Inspection Clerk, hours 8:00 A. M. to 4:30 P. M., Monday through Friday. The position being a five-day position, the two rest days, Saturday and Sunday, are not assigned in a regular relief assignment.

On December 15, 1945, the work of delivering and accounting for pay-checks for the Carrier's Mechanical Department employes was assigned to Claimant Hurt. From 1922 to December 15, 1945 the same work had been assigned to and performed by the occupant of position A-2, Mr. J. E. Mantz, now resigned.

Effective October 30, 1947, four of the Carrier's foremen were authorized by the Carrier to deliver some checks. Claimant Hurt continued to report two hours ahead of his regular starting time on pay days to perform the necessary separating, making the checks ready for delivery, and keeping record of delivery dates on the appropriate forms.

Effective Saturday, September 17, 1949, Claimant Hurt's rest day, the Carrier began to assign the pay-check work to one Mr. W. J. Smith, Ma-

Work on Unassigned Days

As shown by the Carrier's Statement of Facts, the Employees in presenting this claim on the Division, made reference to Section (b) of Rule 35 in support of their claim.

Rule 35 provides in Section (b):

"(b) **Work on Unassigned Days.** Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available 'cut off' (furloughed) employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe. In working regular employes hereunder, it is understood that where a small amount of work is required on each of two or more positions and only one employe is required, the employe regularly assigned to the majority of the work to be performed will be used."

The Carrier's **Statement of Facts** shows the positions authorized to deliver pay checks in its Locomotive Department at Russell, Kentucky, prior to September 17, 1949, the date this claim commences, and subsequent thereto. These positions on September 17, 1949, consisted of two clerical positions and four foreman positions. On October 20, 1949, to meet changed conditions, a position of machinist helper was added.

The work of delivering pay checks was periodic and regular only to the extent of occurring semi-monthly and was not work that ever justified the full time assignment of employes. Thus, the work was of such nature that it was performed as incidental work as an adjunct to the major duties assigned to the positions, and was not work confined to any particular craft or class of employes.

The Carrier has further shown that the work of delivering pay checks was a part of the assigned duties of the four foremen, the same as it was a part of the assigned duties of the two clerical employes. Likewise, when Machinist Helper Smith was authorized to deliver pay checks the work was made a part of his assigned duties, including necessary delivering of pay checks on Saturday. Smith, on Saturday, which was one of his assigned work days, performed this work just the same as he delivered such checks on his other assigned work days.

The delivery of pay checks having been so assigned, there was no work to be performed on the clerical position of Boiler Inspection Clerk, on Saturday. Therefore, Rule 35 (b) has no application, because it is conditioned on work being on a day which is not a part of any assignment.

CONCLUSIONS

The Carrier has shown, by abundant evidence, that the claim of the Employees that the agreement was violated in this case (particularly Rule 1 (b)), is without foundation, and the claim should be denied.

All data contained in this submission have been discussed in conference or by correspondence with the Employee Representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier asserts here that "all pay check delivery work is incidental work, wherever performed, and pay check delivery is not confined to any particular craft or class of employes. Agents under the Telegraphers' Agreement universally deliver pay checks. Other groups, including clerks, deliver pay checks as the conditions justify."

Carrier further states, and it is not denied by the Organization, that "only duly authorized employees are permitted to deliver pay checks. As the authorization for this purpose is personal, it will be obvious that such authorizations must be changed to meet changing conditions."

At the time complaint in this case was made, Carrier was using the services of 4 foremen, 2 clerks and a machinist's helper to deliver pay checks. The delivery of pay checks is incidental work; it is not a full-time job.

The claim here is against Carrier's use of a machinist helper to deliver pay checks on Claimant Hurt's rest days; there is no claim against Carrier for using the Machinist Helper to deliver pay checks on Claimant's assigned work days, other than Saturday (Claimant's rest day). The record shows that the Machinist Helper also assisted in the delivery of pay checks on Monday, Tuesday and Friday in addition to Saturday, when Carrier's pay schedule required such service on those days.

Because there is no showing in the record here that (a) any position was abolished or removed; that (b) the work of delivering pay checks is assigned to clerks by specific reference in the applicable Agreement, or (c) is work belonging to Clerks to the exclusion of all other classes or crafts, a denial award will be made. Award 7784.

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

That the Agreement was not violated.

AWARD

Claim (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September, 1957.