

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when it removed regularly assigned Employee H. J. Gromacki from his position for the purpose of filling a temporary vacancy on Position No. 559 to avoid the payment of overtime to the regular occupant of that position.

2. Carrier shall now be required to compensate Employee A. C. Krohn for eight (8) hours at the time and one-half rate of Chief Yard Clerk Position No. 559 for July 17 and 24, 1955.

EMPLOYEES' STATEMENT OF FACTS: Employee A. C. Krohn is regularly assigned to Chief Yard Clerk Position No. 559, Menominee Belt District, Milwaukee, Wisconsin. Position No. 559 is a seven-day position and Employee Krohn's assigned work week is Tuesday through Saturday with rest days of Sunday and Monday.

Employee F. E. McClintic is assigned to Relief Position No. 11 Saturday through Wednesday with rest days of Thursday and Friday. On Saturday he relieves Yard Clerk Position No. 581 at Muskego Yard. On Sunday and Monday he relieves Chief Yard Clerk Position No. 559 at Menominee Belt. On Tuesday and Wednesday he relieves Clerk Position No. 535 in the Car Record office at Muskego Yard.

Employee H. J. Gromacki is regularly assigned to Relief Position No. 2 Thursday through Monday with rest days of Tuesday and Wednesday. On Thursday and Friday he relieves Yard Clerk Position No. 598 at Stowell Scale.

On Saturday he relieves Chief Yard Clerk Position No. 552 at Fowler Street Station. On Sunday he relieves Auto Messenger Position No. 582 at

Memorandum No. 9 has no application in the instant case as there was no overtime required on Position No. 559 on July 17 or July 24, 1955.

In conclusion the carrier should like to point out once again that Employee Gromacki was not removed from his regular assignment on July 17 and July 24, 1955 for the purpose of performing the Chief Yard Clerk's duties on Position No. 559 nor was there any overtime required on that position on the dates involved, but to the contrary he filled his regular assignment, i. e., Position No. 582 on those days.

Furthermore, employee Gromacki's regular assignment of yard clerk-auto messenger included the performance of yard clerk work and that is the work which he performed in the two instances involved in the claim (to the extent of possibly one hour (1'00) or one hour and thirty minutes (1'30")). This one hour or one hour and thirty minutes of yard clerk work performed by the yard clerk-auto messenger, who normally and regularly performs yard clerk work, is the work upon which this claim is based.

There is no schedule rule support for the claim which the employees have presented and the carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Krohn was regularly assigned to Chief Yard Clerk Position No. 559, Menominee Belt District, Milwaukee, Wisconsin, with assigned work week Tuesday through Saturday and with rest days Sunday and Monday. Employee McClintic was assigned to Relief Position No. 11 Saturday through Wednesday, relieving Chief Yard Clerk Position No. 559 on Sunday and Monday. McClintic was off due to illness on Sundays July 17 and 24, 1955, and he received sick allowance.

Employee Gromacki was regularly assigned to Relief Position No. 2 Thursday through Monday, relieving as follows: Yard Clerk Position No. 598 at Stowell Scale on Thursday and Friday; Chief Yard Clerk Position No. 552 at Fowler Street Station on Saturday; Auto Messenger (or Yard Clerk and Auto Messenger) Position No. 582 at Fowler Street Station on Sunday; and Chief Yard Clerk and Weighmaster Position No. 555 at Canal Yard on Monday.

On Sunday July 17 and on Sunday July 24, 1955, Gromacki performed some yard work in the Menominee Belt District Yard (about three miles distant from Fowler Street Station) which, according to the Carrier, probably would have been performed by McClintic if he had not been absent. On the property, the Carrier also asserted that this work was in addition to filling his regularly assigned Position No. 582 which included yard clerk work in the Menominee Belt District Yard; and that the normal performance of his duties included "necessary yard clerk's work" in the Milwaukee Terminals inclusive of that Yard. His yard clerk work at the latter place involved about one hour on one of the two Sundays in question and one and one-half hours on the other. In this capacity, the Carrier asserted, on July 17 he checked the transfer, reversed the car cards, receipted four shipping directions and carded the cars loaded by a certain milling company; and on July 24 he performed the first two named of these functions.

Employee Krohn submitted time slips for July 17 and 24, which were declined by the Carrier, and the latter adhered to its position on appeal.

The Petitioner maintained that the work of Position No. 582 was suspended on each of the two Sundays in order to transfer Gromacki and have him perform work on Position No. 559, with the intention thereby to avoid the payment of overtime; and that this violated principally Rule 32(f) and (h) of the Agreement between the parties effective September 1, 1949, and Section 4 of Agreement No. 9, which were quoted as follows:

Rule 32(f)--

"(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35(b), (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work.

Rule 32(h)---

"(h) Employees will not be required to suspend work during regular hours to absorb overtime."
Section 4 of Agreement No. 9--

"4. WHEN AN EMPLOYEE IS CALLED FOR OVERTIME WORK ON OTHER THAN A HOLIDAY AND THE WORK CAN BE IDENTIFIED WITH A SPECIFIC POSITION" — PREPONDERANTLY THE DUTIES OF A SPECIFIC POSITION.

"When an employee is called for overtime work on other than a holiday and the work is preponderantly the duties of a specific position, the employee regularly assigned to that position will be called. If that employee is unavailable, the senior available employee with sufficient fitness and ability in the 'sub-division' will be called.

"NOTE: In applying the provisions of this section, 'the employee regularly assigned to that position' means the employee assigned to fill that position on that particular day will be called. If such employee is the regular occupant and he is unavailable, then the relief occupant of that position, if any, will be called or vice versa. If the regular and relief occupants are unavailable, then the senior available employee with sufficient fitness and ability in the 'sub-division' will be called."

The Carrier maintained that Gromacki was not removed from his regular assignment on the two Sundays in question, hence Rule 32(h) would not become operative. Furthermore, it maintained, neither Rule 32(f) nor Section 4 of Agreement No. 9 was applicable since, it contended, there was no overtime required on either day.

The parties differed as to the nature of Relief Position No. 2 in its relation to Yard Clerk Position No. 582. Thus, the Petitioner referred to two Bulletins in 1954 and 1955, first for a temporary vacancy and then for a vacancy, as to Position No. 582—Yard Clerk, Muskego Yard, with the same hours of service, same rate of pay and same rest days as those shown for Position No. 582 on Bulletin which advertised Relief Position No. 2 in February 1954. However, the Carrier pointed out, the latter's reference to Position No. 582 for Satur-

day and Sunday relief stated, "Yard Clerk and Auto Messenger, Fowler Street," and "Must be able to operate an automobile." Similar reference was included in a subsequent Bulletin in July 1954.

Before this Board, the Carrier stated that on the Sundays in question Gromacki "performed the regularly assigned duties of Position No. 582 to which he was assigned. He was not removed from his position **nor did he perform the duties of any other position.**" (Emphasis added). Unless there was an overlapping as between Relief Positions Nos. 2 and 11, this statement was inconsistent with the Carrier's position on the property.

However, even if only the Carrier's position on the property in this regard is accepted, the Board feels that the evidence does not support a finding that Gromacki was physically removed from his Relief Position No. 2 to fill Position No. 559—that is, he was not required to suspend work, in violation of Rule 32(h). At most, he worked only a part of the tour of the latter position, while performing his normal duties including yard clerk work as well as auto messenger service, as bulletined for his position. This is distinguishable from the situation encountered in Awards 9582 and 9583, wherein the Board sustained the claim of an employee regularly assigned to a rest-day relief position who was instructed to vacate yard clerk work and fill office boy work, which consumed his full eight hours.

Furthermore, the evidence did not disclose a violation of Rule 32(f) or Section 4 of Agreement No. 9. Position No. 559 was not filled, and nobody worked it on an overtime basis in violation of the Claimant's rights, on the two Sundays in question. Also, the work done here, on that position, cannot be identified with that position except that McClintic "probably" would have performed certain items done by Gromacki consuming an hour or an hour and one-half of the latter's time.

The Carrier maintained that the Claim was barred under Section 1(c) of Article V of Agreement of August 21, 1954 executed as between Railroads represented by the Eastern, Western and Southeastern Carrier's Conference Committees and the Employees of such Railroads represented by the Employees' National Conference Committee, Fifteen Cooperating Railway Labor Organizations, because Petitioner's Ex Parte Submission in this dispute was not filed on or before October 17, 1956, nine months after payment of the claim was finally denied on appeal. Written "Notice of intention" of filing Ex Parte Submission by the Petitioner was received on October 2, 1956. This was sufficient to bring the dispute before the Board.

We conclude that the Carrier did not violate the Agreement and the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1962.