

**Award No. 10647**  
**Docket No. CL-9632**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Lloyd H. Bailer, Referee**

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**PARTIES TO DISPUTE:**

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

**CLINCHFIELD RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement:

1. (a) Commencing about one year after the inception of the 40-Hour Week Agreement and continuing on each Saturday thereafter by assigning work, attached to and performed by the Rate and Bill Clerk at Erwin, Tennessee Freight Office on five (5) days of the week, namely — Mondays through Fridays, to be performed on Saturdays and Holidays, to employees (Agents) not covered by the Scope of the Clerks' Agreement.

1. (b) When on Saturday, March 3, 1956, and subsequent Saturdays and holidays it used or permitted the use of Mrs. D. T. Bell, a non-employee, in the Erwin, Tennessee freight office to bill freight and perform other work which is assigned to and performed exclusively by Mrs. Blanche H. Martin, Monday through Friday, under the Scope of the Clerks' Agreement.

1. (c) When on Monday, March 5, 1956, it used, or permitted the use of Mrs. D. T. Bell, a non-employee, in the Erwin, Tennessee freight office the entire day to distribute pay checks, work which was assigned to and performed exclusively by Mr. J. M. High, Monday through Friday, under the Scope of the Clerks' Agreement prior to June 20, 1955 when it was removed from his position and assigned to the Agent.

2. (a) That the regular assigned Rate and Bill Clerk, Mrs. Blanche Martin, (and her successors, if there be any), shall be paid wage losses sustained aggregating two (2) hours' pay at the rate of time and one-half (one call) for Saturday, March 10, 1956, and all subsequent Saturdays and Holidays (excepting those days covered by part (b) of this claim), continuing until the violative action described in section 1 (a) hereof is corrected.

2. (b) That Mrs. Blanche Martin shall now be paid for eight (8) hours at the overtime rate of her position due to work of her position, covered by the Clerks' Agreement, being performed by Mrs. Bell, a non-employee, on March 3, 1956, and on subsequent Saturdays and Holidays when violations occurred, continuing until violations cease.

2. (c) That Mr. J. M. High shall now be paid for eight (8) hours at the overtime rate of his position due to the use of Mrs. Bell, a non-employee, on Monday, March 5, 1956, to perform work in the freight office which should have been performed by him.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier maintains at Erwin, Tennessee a freight Office in which its employees, two (2) clerks with payroll classifications within the Scope Rule of the Clerks' Agreement governing the working conditions of clerical employees. There is also employed at this station an Agent not covered by the Clerks' Agreement and having no right to perform work within the scope thereof.

Prior to the 40-Hour Week Agreement there were three clerks employed in this office who perform all work under the scope of the agreement, including rating and billing all freight shipments, six days a week, Monday through Saturday, — the office was closed on Sunday.

To comply with the 40-Hour Week Agreement and still provide six day service, two clerks were assigned Monday through Friday and one Tuesday through Saturday. Under this arrangement clerks still performed all work within the scope of the Agreement.

Due to heavy work on Monday, forces were soon re-arranged so that all clerks were assigned Monday through Friday and the clerical work, including rating and billing freight, on Saturdays and Holidays, was assigned to the Agent in violation to the Agreement. About two years later business at this office decreased and one of the Clerk's positions was abolished, the violations continued and the Agent is still performing all clerical work on Saturdays and Holidays, work which is assigned to and performed exclusively by the two (2) remaining clerks during their assignments.

Mr. J. M. High is assigned to the position of Cashier Clerk, the duties of which include making all collections and performing all accounting work pertaining thereto, abstract all local billing inbound, and assist in rating and billing freight.

Mrs. Blanche Martin is classified as Clerk at Erwin Station, the duties include rating and routing all incoming and outbound freight, carload and less carload, make expense bills and waybills; make interline abstracts; and sign bills of lading and other reports.

The Agent, adding insult to injury, started bringing his wife to the office to perform the work of rating and billing freight and other duties which are assigned to and performed exclusively by Mrs. Blanche Martin, Monday through Friday. Monday, March 5, 1956, while both clerks were on duty, the Agent brought his wife, Mrs. Bell, a non-employee, to the office and used her the entire day issuing pay checks to operating employees and Maintenance of Way employees, work which was performed exclusively by

absence of an extra or unassigned clerk who has not otherwise worked 40 hours in his work week. We think the past awards of the Board sustain this conclusion and we believe it to be correct. Any change in its application necessarily becomes a subject for negotiation."

We have shown that there is no exclusive assignment of clerical duties to the Clerks at Erwin agency. The work involved is that of the Agent. It has been performed by him traditionally, customarily, and historically. It is his contractual right and duty to perform it, and we respectfully submit that there has been no violation of the agreement with the clerical employees — that these claims are wholly without merit — and we request this Board to so find.

Carrier has included in this submission all relevant, argumentative facts and evidence with respect to this claim, all of which have heretofore been presented to the Employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** During our consideration of this case in executive session, after full presentation of the dispute had been made by the parties, contention was made for the first time by the Carrier Members that the claim was not appealed to the Board within the prescribed nine month period as prescribed in Article V of the August 21, 1954 Agreement — to which these parties are signatory. We hold that since the Carrier did not make this objection during the course of its presentation to the Board, the time limit requirements must be deemed to have been waived.

At the time the subject dispute arose on the property, the agency force at Erwin, Tennessee consisted of Agent D. T. Bell, Clerk-Cashier J. M. High and Clerk Blanche Martin. The Agent, a monthly rated employee covered by the Telegraphers' Agreement, was regularly assigned Monday through Saturday. The Clerk-Cashier and the Clerk, both subject to the Clerks' Agreement, were regularly assigned Monday through Friday.

On Saturday, March 3, 1956, Agent Bell billed a car of coal. A time claim was filed by Clerk Martin for eight hours' pay at the overtime rate, on the ground that she was entitled to perform this work.

On Monday, March 5, 1956, the Agent's wife, who is not an employee of the Carrier, distributed employee paychecks. Clerk-Cashier High filed a time claim for eight hours' pay at overtime rate, on the ground that he was entitled to perform this work. The Clerk-Cashier was on duty at the time this incident occurred.

We find no violation of the Clerk's Agreement in the fact that Agent Bell billed a car of coal on the subject Saturday. The Agent has customarily performed some clerical work on Saturdays as well as on other days. The type of clerical work here in dispute was not reserved to the clerical employees vis-a-vis the Agent. The time claim of Mrs. Martin for March 3, 1956 will be denied.

With respect to the paycheck distribution incident of March 5, 1956, the Carrier states it had not authorized the use of Mrs. Bell in the perform-

ance of any work and contends that if anyone was deprived of work it was the Agent, not the Clerk-Cashier.

We note that the Agent was the Carrier's supervisory representative at the subject location. Regardless of whether the paycheck distribution work was a proper function of the Agent, it is clear that the clerical force at that location had a preferential claim to this work as against a non-employee of the Carrier. The Agent erred in permitting his wife to do this work and thereby made the Carrier liable to a claim from the Clerk-Cashier. The time claim of Mr. High for March 5, 1956 will be sustained, but at straight-time rate.

Those portions of the above-quoted claim other than for March 3 and 5, 1956 were not a part of the subject dispute as progressed on the property and ultimately submitted to the Board. The Carrier has noted this fact and has made no waiver in this respect. Such portions of the claim (other than for March 3 and 5, 1956) will therefore be dismissed.

**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 violated the Agreement in part as stated in the above Opinion of Board.

#### AWARD

Claim denied in part, sustained in part and dismissed in part as stated in the above Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1962.