

Award No. 12076
Docket No. CL-11766

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY**

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

1. Carrier violated the current Clerks' Agreement effective February 1, 1938, revised and reprinted April 1, 1953, when it required H. H. Gillard to perform service six consecutive days in his work week at pro rata rate of pay and refuses to allow time and one-half rate for July 19, 1958.

2. Carrier now be required to compensate Claimant Gillard eight (8) hours punitive rate for July 19, 1958 in lieu of the eight (8) hours pro rata paid.

EMPLOYEES' STATEMENT OF FACTS: Claimant was assigned to the position advertised in the following bulletin:

May 16, 1957

File: 013.297

JOB BULLETIN NO. C-23-57

**CLERKS, FREIGHT HANDLERS,
EXPRESS & STATION EMPLOYES:**

Applications will be received in writing in this office for the following position up to and including 8:00 A. M., DST, Wednesday, May 22, 1957:

Position:	No. 3 Yard Clerk
Location:	Shops (Springfield), Ill.
Rate of Pay:	\$17.41 Per Day
Hours:	8:00 A. M. to 5:00 P. M., DST

CONCLUSION

The applicable rules of the collective agreement and the long established accepted practices thereunder were correctly applied in making the force reduction and consolidation of the two separate offices here involved. The rules and practices specifically defeat the penalty overtime claim here made by the organization on behalf of claimant Gillard. A denial is therefore respectfully requested.

All data in support of the carrier's position in connection with claims has been presented to the duly authorized representative of the employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant had held Shop Yard Clerk position No. 3 in Carrier's Shop Yard Office at Springfield, Illinois, and was assigned to work from 8:00 A.M. to 5:00 P.M. Mondays through Fridays with Saturdays and Sundays as rest days. Effective July 16, 1958 the work forces at the yard office and the station were consolidated. On July 15, 1958 all positions in the yard clerical force and the station clerical force were abolished and new positions for the consolidated station and yard force were established.

In a Bulletin dated July 9, 1958 the position of No. 3 Yard Clerk in the Shops Yard Office was abolished effective July 15, 1958 and, by another Bulletin of the same date, a new position of No. 3 Yard Station Clerk was established to work from 8:00 A.M. to 4:30 P.M. Tuesdays through Saturdays with Sunday and Monday as rest days. Claimant filed his application for the new position of No. 3 Yard-Station Clerk and was assigned thereto.

Claimant worked six consecutive days Monday through Saturday, July 14 through 19, 1958. He worked Monday, July 14 on position No. 3 Yard Clerk and he worked Tuesday through Saturday July 15 through July 19, 1958 on his new position No. 3 Yard-Station Clerk. He was paid the pro-rata rate for the six days of work.

Petitioner contends that Claimant is entitled to an additional eight hours at time and one-half his hourly rate of pay for work on Saturday, July 19, 1958, the sixth consecutive day worked. This premium pay is required by Rule 44(b) and (c) which provides that employees who work more than forty (40) hours a week or "more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh work days of their work weeks."

Petitioner argues that the duties of positions No. 3 Yard Clerk and No. 3 Yard-Station Clerk are identical, and one and the same. This, Petitioner says, was planned and executed "for the purpose of evading the provisions of the Agreement, Sections (b) and (c) Rule 44—Overtime . . ." Since the two positions were identical, Carrier violated Rule 68 which reads:

"Rule 68. Rates. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class or kind of work for the purpose of reducing the rate of pay or evading the application of these rules."

The record shows that 23 positions under the Clerks' Agreement (5 in the station and 18 in the yard office) were abolished. At the same time 17 new combined positions were established. Six positions were eliminated in effecting the combination.

There is no question that Carrier has the right to abolish or rearrange positions. This right is not challenged by Petitioner. Were the positions combined to evade specific Rules of the Agreement? We think not. In effectuating the purpose of combining positions in the Station and the Shops Yard Office, Carrier was obliged to abide by the Seniority Rules of the Agreement. It was necessary to Bulletin the remaining 17 positions, permit employees to apply for them, and to make assignments in accordance with that Agreement.

Rule 44 (b) and (c) says:

“(b) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate **except where such work is performed by an employe due to moving from one assignment to another** or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 38.

“(c) Working More Than Five Days in a Work Week. Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, **except where such work is performed by an employe due to moving from one assignment to another** or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 38.”
(Emphasis ours.)

There is no evidence of bad faith or that Carrier consolidated the positions and changed the rest days to evade the overtime provisions of Rule 44(b) and (c). Claimant was moved from one assignment to another within the terms of the Agreement, and not to avoid any of the provisions thereof. His work for six consecutive days falls within the exceptions of Rule 44(b) and (c).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1964.