

Award No. 12380

Docket No. CL-11813

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

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

1. The Carrier violated the provisions of the Clerks' Agreement and specifically Memorandum of Understanding No. 2, paragraph 3, when it called Extra Clerk Shea to work July 10, 1959, one of the rest days of his hold-down position in Penn. Ticket Office, and only paid him straight time.

2. The Carrier further violated the provisions of the Clerks' Agreement and specifically Memorandum of Understanding No. 2 paragraph 3, when it did not permit Extra Clerk Shea to work July 11, 1959, a regular work day of the position he held as a hold-down basis, but designated this as one of his relief days.

3. The Carrier shall pay Extra Clerk Shea at the time and one half rate for working his rest day, July 10, 1959.

4. The Carrier shall further pay Extra Clerk Shea one day's pay at the straight time rate for not being permitted to work July 11, 1959.

5. The Carrier shall further pay Clerk Brady at the rate of time and one half for July 10, 1959, for working Extra Clerk Shea on a position, which Clerk Brady should have worked under the provisions of Agreement 47.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and the National Agreement signed at Chicago, Ill., August 21, 1954, covering clerical, other office, station and warehouse employees between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this Statement of Facts. Various Rules and Memorandums therefore may be referred to from time to time without quoting in full.

2. Because he did not obtain the position on the basis of a "hold-down", he was not required to observe Thursday and Friday as the relief days of this position. Thus, there was no requirement under any provisions of the applicable Agreement to pay him at the rate of time and one-half for service performed on Friday, July 10, this being only the fourth day in his work week.
3. That the Carrier was free to use Extra Clerk Shea on July 10 at the pro rata rate.
4. That the Carrier properly assigned two non-consecutive rest days to Extra Clerk Shea; i.e., July 9 and 11.
5. That the claim of C. J. Brady fails because an Extra Clerk was available at the pro rata rate and there was no necessity of invoking the provisions of Memorandum of Agreement No. 47 in filling Position R-88 on July 10.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim arose when Extra Clerk Shea, assigned to cover Relief Position R-85 in the Long Island Rail Road Ticket Office at Pennsylvania Station, New York, was not permitted, by the Carrier, to work the Cashier Position No. 400 on Saturday, July 11, 1959, it being alleged he did not possess the necessary qualifications to cover the said Cashier's Position.

The basic issue, then, is the ineligibility of Extra Clerk Shea to hold the positions of Cashier in the Pennsylvania Ticket Office, as of July 11, 1959.

It is the contention of the Organization the Extra Clerk Shea had qualified for the position on October 5, 1957, but we find no evidence in the record to support this contention. Indeed, the action of Extra Clerk Shea on July 17, 1959, when he spent the full day with the regular incumbent of the Cashier's Position, on his own time, in a successful effort to school himself in the duties of the position, indicates he recognized his inadequacy as of the date of the claim, and the further fact found in the record that subsequent to July 17, 1959, Extra Clerk Shea was assigned to the position of Cashier when the requirements of his assignment so dictated, leads to the irrefutable conclusion that as of July 11, 1957, Mr. Shea did not possess the qualifications necessary to fill the post of Cashier.

It is well settled the Carrier has the prerogative to determine the fitness and ability of the employe to fill any position, circumscribed only by the requirement that this right must not be exercised in an arbitrary, capricious or biased manner.

We find the Carrier acted properly in the instant claim, and for the reasons set forth, we must deny the claim.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.