

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

William H. Coburn, Referee

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**PARTIES TO DISPUTE:**

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

**WABASH RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5095) that:

(1) Carrier violated the Schedule for Clerks when it assigned the work of preparing a special statement to a junior clerk, Mr. E. Kelly, paid him the overtime rate for performing that work, and failed and refused to utilize senior clerk Mr. Harold Munton.

(2) Mr. Harold Munton shall be compensated at the punitive rate of his regular assigned position, No. 45, rate \$21.30 per day, for January 16, 17, 18, 19, 21 and 22, 1961, for a total of thirty-four and one-half (34½) hours.

**EMPLOYEES' STATEMENT OF FACTS:** On the dates in question Mr. Harold Munton was regularly assigned to position No. 45, Clerk Machine Bureau, General Offices, St. Louis, Missouri, hours of assignment 8:00 A. M. to 4:30 P. M., lunch period 12:30 P. M. to 1:00 P. M., Monday through Friday, rest days Saturday and Sunday.

On the dates in question Mr. E. Kelly was regularly assigned to position No. 46, Clerk Machine Bureau, General Offices, St. Louis, Missouri, hours of assignment 8:00 A. M. to 4:30 P. M., lunch period 12:30 P. M. to 1:00 P. M., Monday through Friday, rest days Saturday and Sunday.

Mr. Harold Munton has seniority established with the Carrier as of September 23, 1941.

Mr. E. Kelly has seniority established with the Carrier as of March 15, 1947.

Both Mr. Munton and Mr. Kelly were assigned to position 45 and 46 respectively with the same title of Clerk Machine Bureau, (See Employees' Exhibits 7 and 8) therefore subject to performing similar work during their regular working hours at the same location, in the same office, at the same rate of pay.

Although Mr. E. Kelly is the junior employe to claimant he was worked on this special statement work and paid the overtime rate, or time and one-half of his regular assignment, for the following dates

has been engaged in that work during his assigned hours and given to some other employe who has not been engaged in the performance of that work.

The claim should be denied.

Copy of the correspondence between the parties relative to this dispute is attached hereto. The Carrier cannot state that this case has been discussed in conference between the representatives of the parties on the property. The representatives of the employes have made no request to discuss this case with the designated representative of the Carrier and there has been no correspondence between the representatives of the parties relative thereto since the decision by the highest officer of the Carrier designated to handle such matters dated May 18, 1961, copy of which decision is included in Carrier's Exhibit "C", attached hereto.

(Exhibits not reproduced).

**OPINION OF BOARD:** This dispute arose in the Carrier's Data Processing Office in St. Louis, Missouri, where each of the two clerical employes here involved held positions titled Clerk-Machine Bureau, carrying the same rate of pay, working hours, and rest days. Claimant was the senior of the two.

In 1961 the Data Processing Office was requested to prepare a statement of revenues and movement of cars or traffic. It was prepared by key punch operators punching I.B.M. cards from data in bound volumes of waybills and abstracts of waybills. Machine listings of the data on those cards were then produced by the I.B.M. machine. The work in dispute consisted of visually checking these listings to see that the cards were properly punched to show correct revenues, routing of cars, station numbers and commodities.

The record shows that the work was performed by the junior clerk during his regularly-assigned hours and that it also required overtime and work on rest days.

The Employes emphasize that the position held by Claimant was identical to the one held by the junior employe as to title, location, rate of pay and hours of assignment and that the work on the special statement was "not a part of any assignment"; that Claimant's fitness and ability to perform the work was not questioned and that, therefore, on the basis of Claimant's seniority standing he "should have worked the overtime . . .", citing Rule 15—Seniority and Promotion.

The Board finds no special significance in the identity of job titles, location, rates of pay and hours of work. The real question here is whether the duties and job content of the two positions were so identical as to have required the Carrier to assign the special statement work to the senior of the two applicants. On this question of fact there appears to be an irreconcilable conflict. The Carrier consistently asserted on the record that the regular work of the junior clerk was more closely related to that performed by him on the special statement than was the regular work assigned the Claimant. During the progress of the claim on the property, the Employes placed primary reliance on the seniority principle, but in their rebuttal brief filed with this Board they point out that Claimant's regular duties also encompassed work similar to that required in preparing the special statement. Neither party offered any proof of its respective assertion. In the absence thereof, the Board cannot resolve the conflict. Thus the substantive issue of whether the Agreement was violated cannot be reached. (Cf. Award 11786).

Accordingly, the claim will be dismissed.

**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 claim should be dismissed for reasons stated in Opinion.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.