

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

(Supplemental)

Paul C. Dugan, 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 (GL-5514) that:

1. Carrier violated the Clerks' Rules Agreement at Savanna, Illinois when it arbitrarily removed the occupant of Relief Position No. 18 from his assignment on Position No. 2694 on Sunday, March 31, 1963 and assigned him to the duties of Position No. 2685.

2. Carrier shall now be required to compensate employe P. A. Spinoso for eight (8) hours at the overtime rate of Yard Clerk Position No. 2685 for March 31, 1963.

**EMPLOYEES' STATEMENT OF FACTS:** The following positions, among others, were in effect at the Savanna, Illinois Yard Office on March 31, 1963:

Pos. No.	Title	Occupant	Hours & Days of Service	Rest Days	Rate of Pay
2685	Yd Clk	P. Spinoso	7:45 A - 3:45 P Tues thru Sat	Sun-Mon	19.67
17	Rel.	M. Podolski	Fri " Tues	Wed-Thur	19.67
	(Pos. 17 relieves	Yd Clk Pos. 2797 from	7:45 a - 3:45 p on Fri & Sat.		
		Yd Clk Pos. 2685 from	7:45 a - 3:45 p on Sunday		
		Messgr Pos. 2698 from	11:45 p - 7:45 a on Mon & Tues.		
18	Rel.	G. Michelson	Sun thru Thur. Fri-Sat		19.67
	(Pos. 18 relieves	Yd Clk Pos. 2694 from	7:45a - 3:45p on Sun-Mon.		
		Yd Clk Pos. 2695 from	3:45p - 11:45p on Tues & Wed		
		Yd Clk Pos. 2691 from	11:45p - 7:45a on Thursday		

- (d) The provisions of this rule do not apply to employees performing work of an employee absent by reason of sickness when sick leave payment is allowed and when none of the regular assignments in the office, in which is located the assignment of the employee absent account of sickness, is blanked by the Carrier." (Emphasis curs.)

On Sunday, March 31, 1963, employee G. Mickelson was temporarily assigned by proper authority to temporarily vacant Relief Position No. 17 (Yard Clerk Position No. 2685), the assigned hours, duties and rate of which are, on Sundays, the same as employee Mickelson's regularly assigned Relief Position No. 18 (Yard Clerk Position No. 2694), for a period of 2½ hours during which time employee Mickelson handled waybills in connection with the make-up of Trains 62 and 72, inclusive of keypunching on an IBM machine the necessary IBM cards to accompany the waybills.

In other words, on Sunday, March 31, 1963, employee Mickelson performed 5½ hours service on his regularly assigned Relief Position No. 18 (Yard Clerk Position No. 2694), during which time he performed all of the necessary duties thereof, and as a result of being temporarily assigned by proper authority to temporarily vacant Relief Position No. 17 (Yard Clerk Position No. 2685) he performed 2½ hours service thereon which constituted the only service necessary to be performed on Relief Position No. 17 (Yard Clerk Position No. 2685) on Sunday, March 31.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of August 14, 1963.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The controlling issue involved herein is whether or not the Carrier suspended the work of an Employee in order to absorb overtime in violation of Rule 32(h) of the agreement between the parties hereto.

The facts were that Claimant Spinoso held regularly assigned Position 2685 as Yard Clerk with rest days Saturday and Sunday. There were no furloughed employees available to fill said Position 2685 on Sunday, March 31, 1963. The Carrier assigned on this date Yard Clerk Employee Michelson to perform, in addition to his regularly assigned duties of Position 2694, part of the duties of Position 2685, the exact hours performed by said Employee Michelson being in dispute.

The Organization contends that the work of Position No. 2694 was suspended on said day in order to transfer Employee Michelson for the purpose of avoiding the payment of overtime in violation of Rule 32(f) and (h) of the agreement between the parties hereto and Section 4 of Memorandum of Agreement 9.

The Carrier's position is that (a) there was no suspension of Employee Michelson's work; (b) the use of Employee Michelson in working Position 2685 did not have the effect of absorbing overtime; (c) the Carrier has the right to spread the work of an employee among other employees; (d) Rule 32(f) or Section 4 of Agreement 9 is not applicable because no overtime was required on the day in question.

The Board was faced with a similar situation involving the same parties in Award 10625. In resolving the dispute, by denying the claim, the Referee stated:

"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."

Further, there was no evidence adduced by the Organization showing that the Claimant herein would have performed the work in question on an overtime basis. As was said in Award 7229:

"Therefore, since we cannot conclude that the Claimant as Recheck Clerk would have performed the work in question on an overtime basis, we cannot find that the instant claim should be allowed."

In view of the above cited awards, we must deny this 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 27th day of May 1966.

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