

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6192) that:

1. Carrier violated the effective Agreement when it assigned work necessary to be performed on Position #177, Jeffery Avenue Yard, to an employee other than the regular incumbent, on the Thanksgiving Day Holiday, November 25, 1965.

2. Mr. M. Steed, the regular incumbent of Position #177, be compensated for wage losses sustained, i.e. a minimum eight hour day, at the applicable holiday rate of Position #177.

EMPLOYEES' STATEMENT OF FACTS: On the date involved in this claim there were three shifts of five regularly assigned Yard Clerks working around the clock twenty-four hours per day, seven days a week at the Carrier's Jeffery Avenue yard car handling facility, specifically, Positions 176 and 177 with assigned hours of 8 A.M. to 4 P.M.; 166 with assigned hours 4 P.M. to 12 Midnight and Position 168 and 173 working 11:59 P.M. to 7:59 A.M. All had assigned duties as generally described in Bulletin No. 14, Employees' Exhibit No. 1.

The Yard Clerk's positions are identical on the three shifts and are covered by the same bulletin covering yard clerk positions. The work involved is of a type reserved to the Yard Clerks as a class, and not to any incumbent of a particular position.

The employees assigned each shift on Yard Clerk positions November 25, 1965 are as follows:

Position No.	Incumbent	Seniority Date	Assigned Hours
176	B. Shaughnessy	November 6, 1925	7:59 A. M. to 3:59 P. M.
177	M. A. Steed	November 2, 1928	7:59 A. M. to 3:59 P. M.
166	D. Williamson	March 12, 1956	3:59 P. M. to 11:59 P. M.
168	L. Warfield	December 26, 1956	11:59 P. M. to 7:59 A. M.
173	J. W. Bowens	March 7, 1957	11:59 P. M. to 7:59 A. M.

RULE 45 (e) OVERTIME

In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on rest days and holidays.

RULE 46 — NOTIFIED OR CALLED

a. Except as otherwise provided in Rule 47, employees notified or called to perform work before or after but not continuous with their regular work period, shall be allowed a minimum of three (3) hours pay for two (2) hours work or less, and if held for duty in excess of two (2) hours, time and one-half will be allowed on the actual minute basis.

b. An employee notified or called to perform work on one or both of his assigned rest days or any of the holidays specified in Rule 51, shall be paid a minimum of eight (8) hours at the rate of time and one-half for such service.

RULE 48 — ABSORBING OVERTIME

Employees will not be required to suspend work during regular hours to absorb overtime.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, the incumbent of Position No. 176, hours 7:59 A.M. to 3:59 P.M.; was advised his position would be blanked on November 25, 1965, a legal holiday. On the date in question the incumbent of Position No. 173, assigned and working 11:59 P.M. to 7:59 A.M. on 11-24 to 11-25-65, worked over on the morning of the 25th until 10:00 A.M.

Claim was filed alleging that Claimant was entitled to be used on overtime work in preference to the regular incumbent of Position No. 173. The Employees cite Rules 38, 45, 46, and 52 in support of their position however, specifically urge that Rule 38(j) is controlling. It reads as follows:

“Rule 38 — Work Week
(j) — Work on Unassigned Days.

Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.”

Carrier asserts that no violation of the Agreement occurred as it applied and conformed to the controlling rule, Rule 45 — Overtime, which reads as follows:

“(e) In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on rest days and holidays.”

Carrier also questions the propriety of the Employes handling of the claim on the property is being a different claim now before the Board than that which was handled on the property and requests a dismissal award. Upon examination of the record, though there is an error in the position number as set forth in Petitioner's letter of intent to the Board, the record does show that on the property the correct position number was shown. We do not believe that Carrier has been misled or its rights prejudiced as to the issue or claim submitted to it by the Employes, therefore, the claim will be considered here.

Under the circumstances and rules involved in this dispute, Claimant had the right, as the regular employe assigned to the first trick, to the work which occurred within the first two hours of his regular assignment. Claimant would have performed this work had not his trick been blanked due to holiday.

Carrier insists that the regular third trick Clerk who is on duty is given preference to work overtime, when the work involved grew out of his tour of duty. Carrier's argument was answered by the Board in Award 4775 (Stone):

* * * * *

"* * * The fact that the work was continuous with that of the prior trick makes it no less a violation of the rule, and the fact that the third trick telegrapher was required to work for an hour after the end of his tour of duty, evidences that there was substantial work remaining to be done within the hours of the first trick assignment and its performance in the absence of the first trick employe was not overtime but work of that trick." (Emphasis ours.)

Since work was required for this period, the rules in our opinion are not in conflict but provide that the regularly assigned Employe should be used. Claimant so assigned was entitled to be called.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.

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