Award No. 16672
Docket No. CL-17179

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE 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-6282) that:

1. Carrier violated the Clerks' Agreement at Lewistown, Montana when on Sunday, May 29, 1966; Sunday, June 12, 1966; Sunday, July 3, 1966; and Sunday, July 17, 1966, it assigned crew calling at Lewistown, Montana to the Yard Clerks at Harlowton, Montana.

2. Carrier shall now be required to compensate employe D. W. Matthews for 5 hours 20 min. at the overtime rate of Position No. 77950 for the following dates:

Sunday – May 29, 1966
Sunday – June 12, 1966
Sunday – July 3, 1966
Sunday – July 17, 1966

EMPLOYES' STATEMENT OF FACTS: At Lewistown, Montana, the Carrier maintains the following clerical positions:

Pos. No.	Title	Hours of Assignment	Days of Assignment	Rest Days
77910	Cashier	8AM–5PM	Mon thru Fri	Sat–Sun
77920	Gen. Clerk	7AM–4PM	Mon thru Fri	Sat–Sun
77950	Yard Clerk	9PM–5AM	Mon thru Fri	Sat–Sun
7793–7795	Relief Clerk		Wed thru Sun	Mon–Tues

Positions 77910 and 77920 are five day positions and are not relieved on the rest days.

OPINION OF BOARD: Claimant is the regularly assigned occupant of Yard Clerk Position No. 77950, which is a six day position, the relief day falling on a Sunday. The Claim is based on the fact that "crew calling" was done on each of the Sundays specified in the claim by a clerk employed at Harlowton, some sixty-three miles from Lewistown, where Claimant is employed. He submits that such "crew calling" should have been performed by him, but since it was not, compensation should be forth-coming equivalent to five hours and twenty minutes (5'20") at the rate of time and a half for each of the four Sundays involved.

In its ex parte submission to this Board, the Organization calls into focus the following rules as being particularly germane to the issue presented, and upon the terms of which a violation is alleged.

"RULE 32. OVERTIME

(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35(b), (if such holiday falls within the employe's work week) the employe regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employe who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work.

(g) When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, employes will be assigned to such overtime in accordance with seniority, fitness and ability, first from the subdivision of the department wherein the work occurs and, secondly, from the entire department."

"RULE 34.
NOTIFIED OR CALLED

(d) Employes notified or called to perform work on Sunday or on one of the seven (7) holidays specified in Rule 35(b) will be allowed five hours and twenty minutes (5'20") at the rate of time and one half for four (4) hours work or less . . ."

The Petitioner propounds the argument that Rules 32(f) establishes who shall be used to perform overtime work identified with a specific position when such work is required before or after assigned hours, that Rule 32(g) establishes who shall perform overtime work which cannot be identified with a specific position or when additional help is required, and that Rule 34(d) provides the method of payment to employes called to perform work on holidays and Sundays. Petitioner also argues that it has been the practice on this property throughout the years when additional help has been required for extra or temporary work that such work will be assigned to available employes at the location where the work occurs.

From a review of the evidence reflecting the discussions on the property between the parties, an oblique reference is made to Rule 28, the Unassigned Day Rule, which reads as follows:

"RULE 28.

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 employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The Carrier answers by stating that the work of "crew calling" is not exclusively reserved to or performed by the employe Claimant at Lewistown, or by employe clerks at any other point on the System, but is work performed not only by clerks but by others outside the Scope of the Clerical Agreement. Carrier further states categorically, and this has not been controverted, that the Clerk at Harlowton who actually did the "crew calling," is located within the same seniority district and is on the same seniority Roster as the Claimant.

Affidavits have been submitted on behalf of the Petitioner, by various employes with considerable years of service attesting to the fact that the work involved has been performed exclusively by clerks at Lewistown. There is no attempt to show by these affidavits that this is a system wide practice. In examining these affidavits, Carrier has to some degree discredited them in their rebuttal statement and argues that since they appear to be "stereotyped and lacking in originality," they should be given little or no credence. Carrier relies on several awards, all of which were based on an alleged violation of the Scope Rule for work performed by employes other than clerical. Petitioner is not basing this claim on the Scope Rule; on the contrary, they are not, according to the evidence before us, alleging such a violation, but are claiming "that work which is located 63 miles apart must be performed by the clerical forces which are maintained at each location, and those clerical forces at Lewistown have a prior right to perform the work which is correlative to their respective positions as provided in the Rules Agreement."

The awards upon which Carrier relies, are distinguishable from the instant case in that the Scope Rule was involved and the work was performed by employes of other crafts. Here we do not have a Scope Rule case. The work was performed by a clerk, but not by the clerk at the location generating such work. The injection of the Scope Rule and evidence of exclusivity by both parties is immaterial and irrelevant to the issue at stake as are Rules 32(f) and (g). Neither of these rules are applicable. Rule 28, the unassigned day Rule is applicable, and since the work involved, was work on an unassigned day at Lewistown, in the absence of an available extra or unassigned employe not having 40 hours of work that week, it should have been given to the Claimant and compensation awarded in accordance with Rule 34, the Call Rule. We will sustain 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 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 25th day of October 1968.

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