



Award No. 17210

Docket No. CL-16705

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 EMPLOYES
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6094) that:

- (1) Carrier violated Clerks' Agreement and continues to violate the rules contained in the Agreement when on June 1, 1965, it assigned the Group 1 duties of the Chief Clerk Naugatuck, Connecticut, rate per day \$21.9224 to a Group 3 position paying a lesser rate.
- (2) Mr. E. Rahn, seniority date 9-16-37 as a Group 3 employee is the regularly assigned Tractor Operator with a daily rate of \$20.2944 per day (2.5368) per hour, and commencing June 1, 1965 he was assigned three hours daily of higher rated Group 1 duties.
- (3) Claimant Rahn shall now be paid the daily amount of .9080 cents per day commencing June 1, 1965, and each subsequent date thereto until settled.
- (4) Carrier shall now re-advertise the position of Tractor Operator because of a change in the daily rate in accordance with Rule 39 of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: April 19, 1965, the clerical force at Naugatuck, Connecticut consisted of the following

Present Force and Duties

Job 001—Agent J. F. Kelly Article 33 (ORT)

Rating, outbound billing, cash account work, all station reports, Average Agreement reports. Handles placements and releases in car service book. Makes switching bills, 37 Report, handles claims and inspections, requisitions, payroll, newsprint allowances, and bills out empty tank cars.

Job 002—Chief Clerk E. L. Rahn \$21.9224 per day

Makes yard check. Takes consist of inbound NX 15, and makes out switch list. Lights heaters on outbound cars.

agreement, that effective June 1, 1965, the inbound billing, cashier, statements, and collection work involving freight presently being performed at Seymour, Naugatuck, and New Britain, all in Connecticut, would be transferred to and thereafter performed in the Central Billing Department at New Haven, Connecticut.

Copy of the April 19, 1965 notice, together with that portion of the enclosures referred to therein which pertain to Naugatuck, is attached as Carrier's Exhibit "A."

It will be noted that prior to June 1, 1965, Claimant E. L. Rahn held position of Chief Clerk at Naugatuck, with rate of \$21.9224 per day. Included among his duties was the making of yard check. There also was a position of Checker, with rate of \$21.2024, which was abolished effective May 31, and a position of Laborer, with rate of \$2.5368 per hour (\$20.2944 per day).

Coincident with the transfer of work from these stations to the Central Billing Department a position of Clerk at Seymour was abolished, and the occupant thereof, in the exercise of his seniority, displaced Claimant Rahn from the Chief Clerk position at Naugatuck. Mr. Rahn, in turn, displaced onto the position of Laborer.

Although it was contemplated that the yard check work, which amounted to approximately three hours daily, would continue to be performed by the Chief Clerk, it developed that during the period from June 1, 1965, to August 6, 1965, it was not possible for the new Chief Clerk to do so, and it was performed by Mr. Rahn. Effective August 9, 1965, this yard check work was assumed by the Chief Clerk.

Under date of July 24, 1965, claim was instituted by the Local Chairman in behalf of Mr. Rahn, requesting that he be paid the difference between his Laborer rate of \$2.5368 per hour (\$20.2944 per day) and the rate of the former Checker, \$21.2024 per day. This difference in rate amounts to \$.9080 per day.

The claim was progressed through the prescribed channels up to and including the undersigned.

Copies of appeal from the General Chairman and of decision by the undersigned are attached as Carrier's Exhibits "B" and "C," respectively.

Agreement dated September 15, 1957, between this Company and the Brotherhood of Railway Clerks is on file with this Board and is, by reference, made a part hereof.

(Exhibits not reproduced)

OPINION OF BOARD: Certain force reductions were made at Seymour, Naugatuck and New Britain account of the transfer of inbound billing, cashier, statements and collection work to Central Billing Department at New Haven, effective June 1, 1965. Prior to that date Claimant held position of Chief Clerk at Naugatuck. Coincident with the transfer, he was displaced from the Chief Clerk position, with rate of \$21.2024 per day, and, in turn, displaced onto position of Laborer, with rate of \$20.2944 per day.

Claimant asks to be compensated the difference in pay between his present rate and that of the former checker when he was required to spend three hours daily in making yard check, or 90.80 cents per day.

It is Carrier's contention that although Claimant as Laborer, a Group 3 position, was required to perform yard check work which was assigned to the Chief Clerk, a Group 1 position, for approximately three hours each work day in the period from June 1, 1965, to August 6, 1965, does not raise him to the status of a clerical worker as defined in Rule 2. That Rule defines clerical workers as "Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work."

Is Claimant entitled under Rule 61 to a higher rate of pay for performing higher rated work or is the four-hour principle applicable in that a lower rated employee must be assigned to higher rated duties for four or more hours per day to qualify for the higher rate?

Rule 61—Preservation of Rates—reads as follows:

"Employees assigned to higher rated positions shall receive the higher rate while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

"An 'assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied whether the regular occupant of the position is absent or whether the assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute an assignment. It shall not be the practice to regard a lower rated employee as 'assisting' a higher rated employee when the volume of work has increased to the extent of justifying the establishment of an additional higher rated position."

Carrier has conceded that it assigned three hours work of a higher rated position to Claimant, this being yard check work which was assigned to the Chief Clerk, a Group 1 position. Under Rule 61 "An 'assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied whether the regular occupant of the position is absent or whether the assignee does work irrespective of the presence of the regular employee . . ."

Therefore, the Board finds that the Claimant, during the period from June 1, 1965 to August 6, 1965 was assigned and did perform work of a higher rated position and under the Agreement he was entitled to be paid at the higher agreed rate for the work he performed. The "four-hour principle" of Rule 2 of the Agreement is not applicable in the present case.

The positions covered by the Agreement consists of certain definite duties and on the basis of these duties, a rate of compensation and other incidents have been determined; therefore, if the parties wish to effect a change or limit the rule application of Rules 2 and 61, exceptions to any rule or rules in this agreement may be made by agreement, in writing, between the Management and the General Chairman as provided by Rule 33 of the Bargaining Agreement.

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 violated.

A W A R D

Claim sustained for the period referred to herein for the difference in pay at rate of 90.80 cents per day or 11.34 cents per hour.

Claim (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.