



Award No. 17213

Docket No. CL-17440

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David H. Brown, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAIL-
ROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6363) that:

1. Carrier violated the rules of the Clerks' Agreement at Seattle, Washington, when on Sunday, July 3, 1966 it used junior employee K. L. Garceau to relieve Chief Car Clerk Position 8238 in preference to employee D. P. Cartwright, the regular occupant of Position 8238 who is senior to employee Garceau.
2. Carrier further violated the Clerks' Agreement when it compensated employee K. L. Garceau at the straight time rate of pay for service rendered relieving Position 8238 on Sunday, July 3, 1966.
3. Carrier shall compensate employee D. P. Cartwright for eight (8) hours at the overtime rate of Chief Car Clerk Position 8238 for Sunday, July 3, 1966.
4. Carrier shall compensate employee K. L. Garceau an additional four (4) hours at the straight time rate of Chief Car Clerk Position 8238 for Sunday, July 3, 1966.

EMPLOYEES' STATEMENT OF FACTS: Employee D. P. Cartwright, who has a clerical seniority date of June 3, 1942, is the regularly assigned occupant of Chief Car Clerk Position 8238 at Seattle, Washington.

Position 8238 is assigned from 6 A.M. to 3 P.M., Monday through Friday, with Saturday and Sunday rest days.

Prior to July 6, 1966 employee K. L. Garceau was the regularly assigned occupant of Weighmaster Position 8639 and is shown on the Seniority Roster issued July 1, 1966 as the occupant of that position. Weighmaster Position 8639 was assigned from 2 P.M. to 10 P.M., Tuesday through Saturday, with Sunday and Monday rest days.

Claimant Cartwright, who has a June 3, 1942 seniority date in Seniority District No. 45, was the regularly assigned occupant of Chief Car Clerk Position No. 8238 at Seattle, Washington which was assigned from 7:00 A.M. to 4:00 P.M. Monday through Friday with Saturday and Sunday rest days.

Rest Day relief service is provided on the Saturday and Sunday rest days of Chief Car Clerk Position No. 8238 and on the Monday rest day of Weighmaster Position No. 8639 by Swing No. 3, the consist of which is as follows:

Saturday & Sunday—Rest Day relief on Pos. #8238—7:00 A.M. to 4:00 P.M.

Monday—Rest Day relief on Pos. #8639—3:00 P.M. to 11:00 P.M.

Tuesday & Wednesday—Rest Day relief on Pos. #8632—11:00 P.M. to 7:00 P.M.

On or about June 23, 1966, there occurred a permanent vacancy on Swing No. 3 and as a result thereof Superintendent J. J. Nentl, under date of June 23, 1966, issued Clerks Bulletin No. 24 advertising Swing No. 3 as a permanent vacancy. A copy of aforementioned Clerks Bulletin No. 24 is attached hereto as Carrier's Exhibit "A".

Claimant Garceau made application for Swing No. 3, as advertised in Clerks Bulletin No. 24, and as a result of being the senior, qualified applicant therefor, he was assigned thereto and commenced filling same as the regularly assigned occupant thereof on Sunday, July 3, 1966.

Where Sunday, July 3, 1966 was a regularly assigned work day of Swing No. 3 (rest day relief on Chief Car Clerk Position No. 8238) and where claimant Garceau filled Swing No. 3 (Position #8238) on Sunday, July 3, 1966 as a result of having been assigned thereto account being the senior qualified applicant therefor or, in other words, where claimant Garceau filled Swing No. 3 (Pos. #8238) on Sunday, July 3, 1966 as the regularly assigned occupant thereof he was compensated for such service, and properly so, in the amount of 8 hours at the straight time rate of Position No. 8238 (the Sunday assignment of his regularly assigned relief Position of Swing No. 3).

Claimant Cartwright was enjoying the second of his two (2) rest days on Sunday, July 3, 1966 and rest day relief was being provided on his regularly assigned Position No. 8238 by the regularly assigned occupant of Swing No. 3 (claimant Garceau), therefore, there was no need for claimant Cartwright's services on his regularly assigned Position No. 8238 on an overtime basis on that date and, consequently, he was not called and/or utilized, and properly so.

Attached hereto as Carrier's Exhibit "B" is a copy of a letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of January 5, 1967.

(Exhibits not reproduced)

OPINION OF BOARD: At all times pertinent hereto D. P. Cartwright was the regularly assigned occupant of Chief Car Clerk Position 8238 at Seattle, Washington, assigned to work Monday through Friday, 6 A.M. to 3 P.M., with rest days Saturday and Sunday. Relief on such rest days is normally provided by the occupant of Swing Position No. 3.

A vacancy occurred in the latter position, and it was bulletined on June 23, 1966, with the bids closing July 1. K. L. Garceau was the successful bidder, and the assignment was made effective July 6. However, Garceau had been moved into the position of July 3, working it from 6 A.M. to 3 P.M., having worked his previous assignment of Position 8639 from 2 P.M. to 10 P.M. on July 2.

Two distinct violations are claimed. The first claim is based on the assertion that Carrier erred in not paying Garceau time and one half for his service on Swing Position 3, since he performed more than 8 hours service within a 24 hour period. This claim is good. The awards of this Board have consistently held, in interpreting rules such as Rule 32(b), that a day, as used therein, is a period of twenty-four hours computed from the starting time of a previous assignment. (See Award 14927 and awards cited therein). Claimant Garceau's claim is sustained to the extent he performed work in excess of eight hours in the twenty-four hour period computed from 2 P.M. on July 2, 1966. Carrier's defense under Rule 32(d) is unavailing, since the assignment was not effective until July 6.

The second claim relates to the use of Garceau instead of the senior Cartwright in filling the vacancy. We think this claim likewise good. Since the new assignment was not effective until July 6, Garceau had no right to the July 3 work by virtue of an assignment. Since no employee was available to fill the vacancy at straight time pay (Garceau having worked his Position 8639 within the 24 hour period aforementioned) the work should have gone to Cartwright under Rule 32(g).

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 two distinct violations of the Agreement resulted from the improper assignment.

A W A R D

Each claim is sustained in conformity with our opinion.

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.