



Award Number 17620

Docket Number CL-18128

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul C. Dugan, Referee

**PARTIES TO DISPUTE:**

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

**DELAWARE AND HUDSON RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6585) that:

1. Carrier violated the current Clerks' Agreement at Binghamton, N.Y. Yard Office on July 4, 1966 when it arbitrarily blanked Chief Clerk Position #8 held by A. S. Ruffo and assigned some of the duties thereof to Yard Clerk J. R. Keys, Machine Operator-Report Clerk Robert Hall and Crew Dispatcher R. J. B. Garvey.
2. A. S. Ruffo shall be compensated twelve (12) hours pay at punitive rate of Chief Clerk #8 for July 4, 1966.
3. J. R. Keyes shall be compensated three (3) hours pay at punitive rate of Chief Clerk #8 for July 4, 1966 in addition to pay received for that date.
4. Robert Hall shall be compensated three (3) hours pay at punitive rate of Chief Clerk #8 for July 4, 1966 in addition to pay received for that date.
5. R. J. B. Garvey shall be compensated six (6) hours pay at punitive rate of Chief Clerk #8 for July 4, 1966 in addition to pay received for that date.

**EMPLOYEES' STATEMENT OF FACTS:** Effective June 30, 1966, A. S. Ruffo was awarded Chief Clerk #8 Position vice M. H. Eggleston per short vacancy Rule 8(c). This position works 7 A.M. to 3 P.M. Monday thru Friday with Saturday and Sunday rest days. This is a five day position. The assigned duties of Chief Clerk #8 among many others consist of supervision of Yard Clerks and their duties, recording time worked and preparing time returns for Yardmasters and Clerks. Prepare reports and handle correspondence, typing ability required. Ordering ice from Cutler Ice Company to ice cars, answering phone calls from Chief Train Dispatchers, Trainmasters, taking data and answering same to and from several offices in Albany by phone, calling Erie Lackawanna and Lehigh Valley railroads for consists of their trains and if there are any cars to be iced and other related duties added on as agreed in negotiations August 2, 1962, making Chief Clerk #8 a five (5) day Monday through Friday position. Attached is copy of that Agreement identified as Employees Exhibit "A".

to the overtime rate already allowed them for service performed on the holiday in question.

Carrier denied this claim at all steps of appeal procedure on the property.

**OPINION OF BOARD:** Carrier blanked the Chief Clerks #8 position at Binghamton, N.Y. for Monday, July 4, 1966. Said position has assigned hours from 7:00 A.M. to 3:00 P.M., Monday through Friday, and is a five day position with no relief provided for the rest days of said position on Saturday and Sunday.

The Organization's position is that Carrier violated the Agreement when it blanked Chief Clerk Position #8 on the July 4, 1966 holiday and required Yard Clerk, J. R. Keyes, Machine Operator-Report Clerk Robert Hall and Crew Dispatcher R. J. B. Garvey to suspend work during their regular hours to perform some of the duties solely handled by the holder of said Chief Clerk Position #8, Monday through Friday.

Carrier contends that the work in question, namely messenger work, answering telephones and relaying messages in connection therewith, cannot be considered the exclusive work of any one position in a busy yard office; that the work here in question has been and is being performed at times by other employees assigned to said yard office inasmuch as all bulletins covering clerical positions in said yard office contemplate the performance of related work as required.

The record shows that some work assigned to and regularly performed by Chief Clerk Ruffo was performed by other clerical employees on said holiday. Under Decision #2 of the Forty Hour Week Committee and prior awards of this Board the Carrier was required to utilize Claimant Ruffo to perform such duties on the holiday. See Award Nos. 7134, 8563, 13824 and 14703.

In regard to the question of damages, Carrier objects to Claimant A. S. Ruffo, the holder of said position #8, claiming 12 hours pay at the punitive rate inasmuch as petitioner failed to show that the work in question was performed outside the normal hours of his assignment. Petitioner bases his claim for the 12 hours punitive rate of pay on the grounds that the work in question performed by other employees required 4 separate calls, however no proof was offered to show that there would have been 4 separate calls for said work and no evidence adduced to prove that it took more than 8 hours of the position's regular hours of assignment to perform the work in question. Therefore, Claimant Ruffo shall be entitled to 8 hours pay at the punitive rate. Further, Carrier objects to the claims of Claimants Keyes, Hall and Garvey on the grounds what they were on duty on the date in question and suffered no loss of pay. It is true that these 3 Claimants did not suffer any "pecuniary loss" or "loss of work opportunity" and thus we are compelled to deny their claims.

**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 in accordance with the Opinion.

**A W A R D**

Claim partly sustained and partly denied in accordance with the Opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD**

By Order of Third Division

**ATTEST: S. H. Schulty**

Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.