



Award Number 17975

Docket Number CL-18274

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-6576) that:

- 1) Carrier's assignment of overtime work of crew calling at Montevideo, Minnesota to the occupant of position of Train Director, an employee who holds no seniority under the Clerks' Agreement, violates the Clerks' Agreement and Memorandum of Agreement between the parties dated June 9, 1961.
- 2) Carrier shall compensate employee J. B. McKeown for two (2) hours at the time and one-half rate of Yard & Ticket Clerk Position No. 66520 for each of the following days on which Train Director Maloney was used to call crews after his assigned hours on April 5, 6, 8, 10, 11, 12 and 16, 1968 and for each subsequent date on which he performs such overtime work until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Employee J. B. McKeown, who has a seniority date of March 31, 1948 in Seniority District No. 40, is the regularly assigned occupant of Ticket & Yard Clerk Position 66520 at Montevideo, Minnesota with hours of assignment 9 P.M. to 6 A.M., meal period 1 A.M. to 2 A.M. Position 66520 is a 7-day position and is relieved on the two rest days.

A. E. Maloney is the occupant of Train Director Position at Montevideo with hours of assignment 7:30 A.M. to 4:30 P.M. By agreement between the parties dated June 9, 1961, the Train Director position was placed within the scope of the Clerks' Agreement. That agreement, however, provided that Mr. Maloney would not establish seniority under the Clerks' Agreement while occupying the position of Train Director.

Prior to April 5, 1968, claimant McKeown received a call to perform crew calling work occurring between the hours 4:30 P.M. and 9 P.M.

Effective April 5, 1968 that overtime work was transferred to and has since been performed by Train Director Maloney.

filed by the regularly assigned relief occupant of Position No. 66520, C. D. Paugh, either on dates April 10 and 11, 1968 or at any other time subsequently thereafter.

Attached hereto as Carrier's Exhibit "B" is a copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of July 3, 1968.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant is the regularly assigned occupant of Ticket & Yard Clerk position 66520 at Montevideo, Minnesota, with hours of assignment 9:00 P.M. to 6:00 A.M., during which hours he performs the required crew calling at that location.

A. E. Maloney is the occupant of Train Director Position at Montevideo and his duties include calling train crews.

It is agreed that crew calling is not the exclusive work of any particular craft or class.

On April 5, 6, 8, 10, 11, 12 and 16, 1968 the Train Director called crews at times outside Claimant's regularly assigned hours.

It is Petitioner's position that Carrier violated Rule 32—OVERTIME by failure to call Claimant to make the crew calls made by the Train Director at the times he did on the dates specified in the Claim: The pertinent provisions of the Rule relied on by Petitioner read:

"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 employee's work week) the employee 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 employee 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, employees will be assigned to such overtime in accordance with seniority, fitness and ability, first from the sub-division of the department wherein the work occurs and, secondly, from the entire department."

Carrier's defense is that the Train Director called the train crews as one of his duties included in his monthly rate of pay; therefore, no overtime work was involved; and, consequently Rule 32 is not applicable. Its defense finds support in Memorandum of Understanding between the parties dated June 9, 1961, which in pertinent part reads:

"Reference is made to pending request of your Organization now identified as NMB Case A-6248 that the position of Train Director at Montevideo, Minnesota be placed within the scope of the Clerks' Rules Agreement and made subject to all the rules therein.

The position of Train Director at Montevideo, Minnesota has been held by employee A. E. Maloney for many years. He is paid a

monthly rate to cover an assignment of six days per week with daily hours not necessarily limited to eight. In an effort to dispose of this matter the carrier is agreeable to placing the position of Train Director at Montevideo, Minnesota within the scope of the Clerks Rules Agreement effective at once with the following understanding: (Emphasis supplied)

1. That neither the designation "Train Director" nor the duties related thereto, such as, but not limited to the direction of trains, regulating tonnage, lining up work of yard crews and directing yard and train crews will be within the scope of the Clerks Rules Agreement.
2. Mr. Maloney will not be subject to displacement from the position so long as it exists and so long as he elects to retain such position.
3. So long as Mr. Maloney retains the position the carrier may continue the present method of assignment and payment as referred to above.
4. Mr. Maloney will not establish seniority under the Clerks Rules Agreement while occupying the position of Train Director.
5. When Mr. Maloney permanently vacates the position of Train Director at Montevideo, Minnesota for any reason whatsoever, or should the position be abolished, those clerical duties remaining, such as but not limited to making and checking lists, checking tracks and trains and calling train crews will remain within the scope of the Clerks Rules Agreement and be handled in accordance with the rules thereof. In order to do so, should it be necessary to create a clerical position, the rate of pay of such position will be established in accordance with the provisions of Schedule Rule 18. (Emphasis supplied.)

The Memorandum is persuasive uncontroverted evidence that the Claim is without merit.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division
ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1970.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.