

Award No. 18043
Docket No. CL-18218

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY
**(Involving employes on lines formerly operated by the
Wabash Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6562) that:

(1) Carrier violated the following rules of the current Clerks' Agreement: Rule 3(b), Rule 12, Section 1, paragraph (a), (g-5), (i) and Rule 20(a) when during the week of November 13, 1967, it failed or refused to properly compensate Clerk Mary Kusmer, St. Louis Terminal, St. Louis, Missouri, by limiting her work week to three (3) days. By virtue of said violations the Carrier shall now:

(2) Compensate Clerk Mary Kusmer two (2) days at the pro-rata rate in the amount of \$23.68 for each day.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Mary Kusmer is an extra and/or unassigned clerk on the St. Louis Terminal of the Norfolk & Western Railway Company, Western Region (formerly Wabash Railroad Company) with a seniority date of September 20, 1966.

The week of November 13, 1967 Clerk Kusmer was called to work by the Carrier and her services utilized as follows:

Monday, November 13, 1967 — Position No. 187 — Bill Clerk — Rate \$23.68
Tuesday, November 14, 1967 — Position No. 187 — Bill Clerk — Rate \$23.68
Friday, November 17, 1967 — Position No. 187 — Bill Clerk — Rate \$23.68

The claim was filed on behalf of Clerk Kusmer by Local Chairman F. M. Meehan on November 22, 1967 and was declined by Freight Agent R. J. Hillgamy on November 27, 1967.

a rule be adopted providing for a guaranteed extra board for clerks in letter dated May 14, 1968, reading as follows:

**"NORFOLK AND WESTERN RAILWAY COMPANY
St. Louis, Missouri**

May 14, 1968
103.121
103.63

Mr. Grady F. Jackson, Chairman
General Committee — B. of R.C.
1220 Ambassador Bldg.
411 No. 7th Street
St. Louis, Missouri 63101

Dear Sir:

Referring to your letter of April 10, 1968, relative to the claim of Mrs. Mary Kusmer for two (2) days pay at the pro rata rate of Position 187, Bill Clerk, \$23.68 per day, which was discussed in conference on April 30, 1968.

The claim presented on behalf of Mrs. Kusmer is not supported by the rules of the Schedule for Clerks and is again respectfully declined.

During the conference on April 30 we also discussed your suggestion that a rule be adopted providing for a guaranteed extra board for clerks.

We have given this matter careful consideration, and this is to advise we are unwilling to establish a guaranteed extra board for clerks.

Yours truly,

/s/ F. A. Johnson
Manager Labor Relations"

A copy of the exchange of correspondence between the representatives of the parties in connection with the alleged dispute described in the Employees' ex parte Statement of Claim is attached hereto and made a part hereof, marked Carrier's Exhibit "A."

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Mary Kusmer, is an extra clerk on the St. Louis Terminal of the Norfolk and Western Railway Company, St. Louis Terminal, St. Louis, Missouri. The week of November 13, 1967, Claimant was called to work by Carrier to fill the temporary vacancy existing on position No. 187, bill clerk, on November 13, 14 and 17, 1967, for which claimant was allowed eight hours on each date. Claimant did not work on the two remaining days of that week and makes this claim for those two

additional days at the pro rata rate based upon the following rule appearing in the agreement between the parties:

"Rule 3(b) Nothing herein shall be construed to permit the reduction of days for employees covered by these rules below five (5) per week except that this number may be reduced in a week in which holidays occur by the number of such holidays."

Carrier cites the number of cases to the effect that a rule such as the one in question here applies only to regularly assigned employees and has no relation to extra employees. Award 3519 (Carter), Award 6968 (Carter), Award 10170 (Gray), and Award 10350 (Gray).

By reason of the clear precedent cited by the Carrier to the effect that Rule 3 (b) does not apply to the Claimant who was an extra clerk and for other reasons which are not necessary to discuss here, we find that Carrier did not violate the 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.