



Award No. 18092
Docket No. CL-18520

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6735) that:

1. Carrier violated the Clerks' Agreement effective September 1, 1952 and as amended effective March 23, 1959, particularly Rules 1, 3(b), 16, 17(e) and 18, among others, when on Saturday, February 1, Sunday, February 2, and Monday, February 3, 1969, it used Storehelpers to perform Receiving and Delivery Clerks' higher rated work in its Stores Department at Billerica Shops, Massachusetts.

2. Carrier shall now be required to compensate Receiving and Delivery Clerk W. F. Duggan, eight (8) hours' pay at punitive rates for his rest days, Saturday, February 1, 1969 and Sunday, February 2, 1969 and eight (8) hours' pay at punitive rates for Monday, February 3, 1969, a total of twenty-four (24) hours at \$5.31 per hour, total \$127.44.

3. Carrier shall also be required to pay Paul J. Baril, Herbert J. Barnes, George Donaldson, Anselme Laflamme, Frederick A. Melvin, Albert Nolan, Michael D. Connors, Dennis A. Barsamian, Steven J. Baroni and H. Madden, all storehelpers, each, the difference between the Storehelpers' rate of \$3.07 per hour and the Receiving and Delivery Clerks' rate of \$3.54 per hour (.47 hour) for eight (8) hours on February 1, 1969, for eight (8) hours on February 2, 1969 and for eight (8) hours on February 3, 1969, a total of 24 hours at .47 cents or \$11.28 to each employee named above.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. W. Duggan occupied position of Receiving and Delivery Clerk on the clerical roster, Stores Department, Billerica Shops, Mass., working Monday through Friday from 7:00 A.M. to 3:30 P.M. (½ hour lunch), Saturday and Sunday rest days, which are unassigned rest days.

Claimants Baril, Barnes, Donaldson, Laflamme, Melvin, Nolan, Connors, Barsamian, Baroni and Madden occupied Storehelpers' positions on a separate

plus material is checked in or tallied through the use of Stores' Form 1900A by a Storehelper.

OPINION OF BOARD: Among the job classifications in effect at the time the claims arose were Shipper-Receiver with a rate of \$3.54 an hour and Storehelpers with a rate of \$3.07 an hour. On the dates in the claims Storehelpers handled surplus material from Boston Engine Terminal, Charleston, Massachusetts and East Deerfield Engine House, East Deerfield, Massachusetts to Billerica Shop, North Billerica, Massachusetts. Saturday and Sunday, February 1 and 2, 1969, were rest days for all the claimants. Monday, February 3, 1969 was their regular work day.

In handling the surplus material it became necessary for a Storehelper to check in or tally the material on Store's Form 1900A. The Claimant, Receiving and Delivery Clerk, contends that the work of checking and tallying belongs to him and he should have been called to do that work. The other Claimants, Storehelpers, are asking pay at 47 cents an hour, which represents the difference in the two rates of pay, for all hours worked on the three days.

Certain facts are clearly established in the record. (1) The returned surplus material was checked in or tallied by a Storehelper on Store's Form 1900A. (2) Material received after purchase from a vendor is checked in or tallied by a Receiving and Delivery Clerk. (3) Only one Storehelper actually checked in or tallied the returned material. The other nine performed manual work. (4) There are two seniority rosters at Billerica, one for Clerical employees and one for Storehelpers.

The definitions of the covered job classifications as provided in Rule 2 indicate that the employee regularly assigned to check in or tally material is a Clerk and a Storehelper is an employee "performing manual work not requiring clerical ability." Whether material is checked in or tallied on Store's Form SD-17 or on Store's Form 1900A, it is clerical work which belongs to the Receiving and Delivery Clerk unless the historical and traditional practice on the property is to the contrary.

No such a history, tradition and practice on this property has been established. In denying the claim of the Receiving and Delivery Clerk, Carrier wrote to the General Chairman as follows:

"At conference this date, discussion was had of claim of W. F. Duggan, Receiving and Delivery Clerk, for twenty-four (24) hours' pay at the rate of time and one-half due to Storehelpers assisting him to tally surplus material transferred from Charlestown Stores Department to Billerica Stores on February 1, 2 and 3, 1969.

While the Receiving and Delivery Clerk performs this work at outside facilities, there is no prohibition in Store-Helpers assisting accordingly when material is transferred from one Stores Department to another. This is also supported by the historical and traditional application."

It should be noted that the Storehelpers did not assist the Receiving and Delivery Clerk on Saturday and Sunday, February 1 and 2, 1969. He was not there. He was not called to work on his rest days. Assisting the Clerk may be a proper and normal function of Storehelpers, but it is confined to putting the material away, and not checking in or tallying material. The statement in

the letter is a mere assertion and not evidence of a contrary practice on this property. The Carrier has produced no evidence that Storehelpers have on previous occasions checked in or tallied new or surplus material on any prescribed form.

Under Rule 17(e), Claimant W. F. Duggan, the regularly assigned Receiving and Delivery Clerk, was entitled to be called to check in or tally the surplus material on his days of rest, Saturday and Sunday, February 1 and 2, 1969 since no extra or unassigned employe with less than forty hours of work that week was available. This Claimant Duggan was on duty on Monday, February 3, 1969, and was paid for all of the hours he worked. He could not alone have performed that additional work during overtime hours. He would have required the help of the Storehelpers to store the surplus material. While Carrier may not deliberately violate the agreement by assigning work contrary to the provisions thereof, there is no evidence here that the Carrier deliberately permitted a Storehelper to check in or tally surplus material to deprive a clerical employe of that work on Monday, February 3, 1969. There is no provision in the Agreement for regular and punitive pay for the same work hours.

Only one Storehelper checked in or tallied the surplus material on each of the three days. The record does not show which one of the ten Storehelper claimants did the work. Since this work pays a higher rate, the senior Storehelper is entitled to the work and rate of pay.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement within the purview of the Opinion.

AWARD

1. The claim of W. F. Duggan is sustained for sixteen (16) hours at the punitive rate for February 1 and 2, 1969 and his claim for eight (8) hours at the punitive rate for February 3, 1969 is denied.

2. The claim of the senior Storehelper among the ten (10) claimants named is sustained for twenty-four (24) hours at 47 cents.

3. The claims of the other nine (9) Storehelpers are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1970.

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