



Award No. 18657
Docket No. CL-18754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6758) that:

1. Carrier violated the rules of the Clerks' Agreement at Cedar Rapids, Iowa, when it failed to fill vacancies occurring on Yard Clerk Position 33820 on February 25, 26, March 1, 13 and 14, 1969 in accordance with seniority, fitness and ability.

2. Carrier shall compensate employee J. J. Trimble for eight (8) hours at the time and one-half rate of Yard Clerk Position 33820 for each of the following days: February 25 and 26, March 1, 1969.

3. Carrier shall compensate employee E. L. McMickle for 5 hrs. 30 min. at the time and one-half rate of Yard Clerk Position 33820 for March 13, 1969; and 8 hours at the time and one-half and one-half rate of Yard Clerk Position 33820 for March 14, 1969.

EMPLOYEES' STATEMENT OF FACTS: Employee J. Trimble, seniority date October 28, 1947, is the regularly assigned occupant of Yard Clerk Position 33820 at Cedar Rapids, Iowa and is assigned from 11 P. M. to 7 A. M., Monday through Friday, with Saturday and Sunday rest days.

Employee E. L. McMickle, seniority date February 5, 1948, is the regularly assigned occupant of Chief Yard Position 33800 at Cedar Rapids, and is assigned from 7 A. M. to 3 P. M., Tuesday through Saturday, with Sunday and Monday rest days.

C. K. Dunning, seniority date February 7, 1966, is the regularly assigned occupant of Relief Clerk Position 1 at Cedar Rapids, relieving Yard Clerk Position 33820 7 A. M. to 3 P. M. on Saturday; Chief Yard Clerk Position 33800, 7 A. M. to 3 P. M., Sunday and Monday; and Yard Clerk Position 33820, 3 P. M. to 11 P. M. on Tuesday and Wednesday.

EMPLOYEE	SENIORITY DATE	TITLE	POSITION NUMBER	REST DAYS
E. L. McMickle	2-5-48	Chief Yard Clerk	33800	Sunday & Monday
J. J. Trimble	10-28-47	Yard Clerk	33870	Saturday & Sunday
J. F. Schloeman	1-22-68	Yard Clerk	33820	Tuesday & Wednesday
C. K. Dunning	2-7-66	Relief #1 — Works as follows:		
Yard Clerk				
		Pos. No. 33860 — 7:00 A. M.- 3:00 P. M.		Saturday
Chief Yard Clerk				
		Pos. No. 33800 — 7:00 A. M.- 3:00 P. M.		Sunday & Monday
Yard Clerk				
		Pos. No. 33820 — 3:00 P. M.-11:00 P. M.		Tuesday & Wednesday
		Rest Days — Thursday & Friday		

On Tuesday, February 25 and Wednesday, February 26, 1969, C. K. Dunning, regular assigned occupant of Relief Position #1, was scheduled to work Position 33820 from 3:00 P. M. to 11:00 P. M. but was unable to work either of those two days. The regular assigned occupant of Position 33820 — J. F. Schloeman — worked his assigned rest days for which he was compensated eight hours at the time and one-half rate for each day, and properly so.

On Saturday, March 1, 1969, Employee J. F. Schloeman, regular assigned occupant of Yard Clerk Position 33820, was unable to work and Employee C. K. Dunning, the regularly assigned relief clerk was called and did work. Employee Dunning was compensated eight hours at the overtime rate on that date, and properly so.

On Thursday, March 13, 1969, Employee Schloeman, because of an emergency at home, left his assigned Position 33820 at 5:30 P. M. and Employee Dunning was called and completed the assignment (5:30 P. M. to 11:00 P. M., five and one-half hours) for which he was compensated five hours and 30 minutes at the overtime rate, and properly so, for performing service on his assigned rest day.

On Friday, March 14, 1969, Employee Schloeman was absent from his regularly assigned Position 33820 and Employee Dunning, the regularly assigned relief clerk, was called to fill said position on his rest day for which he was compensated eight hours at the overtime rate, and properly so.

Attached hereto as Carrier's Exhibit "A" is a copy of a letter dated June 25, 1969 written by Mr. L. W. Harrington, Vice President-Labor Relations to Mr. H. C. Hopper, General Chairman of the Clerks' Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 25 and 26, 1969 C. K. Dunning the regularly assigned occupant of Relief position #1 was scheduled to work position 33820 from 3:00 P. M. to 11:00 P. M. When Dunning was unable to work on those days the regular occupant of position 33820 J. F. Schloeman who is inferior in seniority to claimant J. J. Trimble was assigned the work. On March 1, 13 and 14, 1969 J. F. Schloeman, the regular occupant of Yard Clerk position 33820 was unable to work and the work was assigned to the regularly assigned relief Clerk C. K. Dunning who is inferior in seniority to claimants J. J. Trimble and E. L. McMickle.

In the original handling on the property the claims were denied on the basis that the work was awarded in accordance with Rule 32(f).

First let us state that there is no question but that Rule 32(f) is not the applicable rule under the facts presented. Rule 32(f) applies to overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35. Neither is the case here.

The Organization claims that Rule 32(g) is controlling and that the work should have been assigned to claimants in accordance therewith.

"Rule 32(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 subdivision of the department wherein the work occurs and, secondly, from the entire department."

Rule 32(g) provides for assignment of overtime other than on a strict seniority basis. The question of the fitness or ability was never raised. The meager record before us of the handling on the property only indicates that the Carrier applied Rule 32(f) in assigning the overtime. This was in violation of the Agreement. Rule 32(g) is applicable to the assignment of overtime work under the circumstances present in the case at bar. Accordingly we will sustain the claim.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1971.

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