

Award No. 18944
Docket No. CL-19010

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6879) that:

1. Carrier violated the rules of the Clerks' Agreement at Houston, Texas, when on March 12 and 13, 1970, it used junior employe L. C. Chronister to work Extra Job No. 999, on an overtime basis, in lieu of senior employe P. V. Sparks.
2. Carrier shall be required to compensate P. V. Sparks for eight (8) hours at the overtime rate, each day, March 12 and 13, 1970.

EMPLOYES' STATEMENT OF FACTS: 1. By agreement between the parties here involved and pursuant to Rule 7 (c) of the Clerks' Agreement, there are two (2) regularly assigned clerical positions in Carrier's Office of Superintendent. Both positions are —

- (a) Assigned a five (5) day work week
- (b) Assigned working hours, 8:00 A. M. - 5:00 P. M.
- (c) Assigned a meal period 12:00 Noon until 1:00 P. M.
- (d) Assigned two (2) rest days, Saturday and Sunday and neither position is relieved on assigned rest days by a relief clerk. (Employes' Exhibits Nos. 1 and 2)

The occupants of the two (2) positions at the time of the instant dispute, were —

Mr. J. C. Becton — Chief Clerk to Superintendent (7-c)

Mrs. Bernice Browan — Secretary to Superintendent (7-c)

2. The instant dispute arose, when beginning Wednesday, March 11, 1970, Mrs. Browan, as work of her regular assignment, was required to take and transcribe a HB&T — MP joint investigation. The investigation commenced at 9:00 A. M. Wednesday, March 11, 1970, and was concluded at 6:48 P. M., Friday,

permitted to exercise rights over employees in group or seniority district from which promoted." (Emphasis ours.)

Jobs under this category cannot be merely filled by using seniority as a strict method and the organization certainly recognized this when Rule 7 was written and the exceptions put forth to provide for competent employees to perform these duties. Under the current agreement and practices on 7-C assignments, when a clerk is called for such a vacancy, they remain on this job until such time as they have completed the assignment or are released due to regular employee again assuming his duties in line with accepted practices on the railroad. Clerk L. C. Chronister pay records would indicate that on these dates in question, he worked an assignment known as 999. This procedure comes about by the simple method of due to IBM programming on payroll records, all clerical assignments have a number and any assignment for payroll records that does not carry a given number is programmed 999, which indicates that this is an additional compensation going to some employee that was not in the numbered of the clerical assignments. Therefore, the indication of 999 comes in, in which the organization assumes extra job in their claim. Clerk Chronister worked the 7-C assignment in the Superintendent's office as provided under the agreement on March 11, 12, and 13, 1970, and for these three days he was allowed eight hours each day at the punitive rate.

All correspondence in connection with this claim has been properly handled and is listed as Exhibits A, B, C, D, and E.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 11, 12 and 13 Carrier and the MP were engaged in a joint investigation. The secretary to the Superintendent was assigned to record the investigation for Carrier. Consequently it was necessary to assign another employee to assist in her absence.

The position of secretary to the superintendent is covered by Rule 7 which reads as follows:

"Rule 7. Promotions, Assignments and Displacements

(a) Employees covered by these rules shall be in line for promotion. Promotions, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that seniority shall not apply to the positions named in Paragraph (c) of this rule. (In filling positions listed in Paragraph (c) of this rule, preference shall be given to employees coming under the provisions of this Agreement).

* * * * *

(c) Office of General Manager
1 Secretary

Office of Superintendent
1 Chief Clerk
1 Secretary

* * * * *" (Emphasis ours.)

Carrier selected an available employee who performed the tasks required of him in the Superintendent's office during the three days required to take and transcribe the record of the investigation. The employee assigned to work at overtime in the Superintendent's office was junior to the claimant. Claimant therefore alleges a violation of the Agreement. Carrier recognizes that unless the employee assigned to assist in the Superintendent's office may be said to have performed Rule 7(c) duties the claim is valid.

Thus Carrier's principal defense is that since the duties were those of a Rule 7(c) position, Claimant may not lay claim to them. In addition since clearly Claimant was not available on March 11, the first day of the assignment, Carrier alleges that under established practice (on Rule 7(c) assignments) the person originally assigned remains on the assignment.

The claim hinges, of course, on whether the employee assigned to assist in the Superintendent's office was on a job covered by Rule 7. The Organization asserts that the incumbent was performing the duties of her position while recording the investigation. This is evidenced, it says, by the description of the duties of the position, which read (in part):

"Description of Duties — Regular Secretarial duties. Must be rapid and accurate typist, capable of taking and transcribing investigations. Any other duties assigned by Superintendent. Subject to Rule 7-C of the Agreement."

Carrier concedes that taking the record of investigations is a part of the duties of the position of secretary to the Superintendent. It argues however that taking the record of this particular investigation was not a part of her duties because she was, Carrier alleges, substituting for the MP recorder. Even if the Board were disposed to agree with this contention it has a serious flaw. Carrier has asserted that the substitution was necessary and was made, but it failed to offer evidence with probative value to establish the asserted facts. While Claimant has the burden of proving the facts on which his claim rests, Carrier also has the burden of proving the facts offered to defend the Claim. Instead Carrier has relied on assertions. This Board has held that assertions cannot take the place of proof. (See for example Awards Nos. 8065, 8486, 9788, 12685, 16313, among others.) The Board finds that while the Secretary to the Superintendent was engaged in reporting the joint investigation she was engaged in duties that are a part of her job.

Since, as we have found, the position of Secretary to the Superintendent was being occupied by the incumbent the employee assigned to his office on March 11, 12 and 13 was not performing work covered by Rule 7. Therefore the normal seniority rules must be applied to the overtime work.

In view of our decision, only one of Carrier's other defenses to the claim need be considered. It is conceded that Claimant was not available for the assignment on March 11. The record shows that he was available on March 12 and 13. Carrier has alleged a practice of continuing employees "on Rule 7(c) assignment" until the assignment is completed. Since, as we have found, this was not a Rule 7(c) assignment the practice referred to would not apply.

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 14th day of January 1972.