

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19978
Docket Number CL-19978

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7225)
t h a t :

1. Carrier violated Rules 1, 2, 3, 5, 25 and 45 of the Clerks' **Rules** Agreement, at Monroe, Louisiana, when, beginning September 13, 1971, it required and/or permitted its Relay **Manager**, D. H. Crockett, to Leave the Relay Office to perform clerical work in another office, six days per week, Monday through Saturday.

2. Carrier shall now be required to compensate Mr. **J. L. Ragland** at the punitive rate of pay for the dates and time outlined below:

<u>Date Claimed</u>	<u>Time Claimed at Punitive Rate</u>
September 13, 1971	2 hours and 30 minutes
September 14, 1971	3 hours and 30 minutes
September 15, 1971	3 hours
September 16, 1971	3 hours and 15 minutes
September 17, 1971	2 hours and 45 minutes
September 18, 1971	3 hours
September 20, 1971	3 hours
September 21, 1971	2 hours
September 22, 1971	2 hours
September 23, 1971	3 hours
September 24, 1971	2 hours
September 25, 1971	3 hours
September 27, 1971	2 hours
September 28, 1971	2 hours
September 29, 1971	2 hours
September 30, 1971	2 hours

A total of 41 hours at the rate of \$6.33 per hour, or \$259.53.

OPINION OF BOARD: Upon a review of the entire record, the Board is of the view that the Organization has demonstrated, by probative evidence, Claimant's right to perform the work in question, subject only to a determination of whether the employees under the telegraphers' Agreement could appropriately perform this clerical **work** under the doctrine established in Award 615 and subsequent determinations.

In the case at issue, the Relay Manager was required to Leave his office on the second floor of a building to report to another office on the first floor of the same building to perform the clerical work.

Carrier has cited certain Awards upholding the right to require employees to travel certain distances to perform work. However, in those Awards performance of clerical work under an "ebb and flow" concept was not at issue.

Award 615 (**Swacker**) was redefined by the same Referee in Award 636 and it was held appropriate to assign clerical work, existing or arising at, or immediately adjacent to, the post of the telegrapher. Award 9440 (Bernstein) considered various geographical distances as having a bearing on the issue.

We view, with favor, the determination of Referee Carter in Award 4288 :

"We think the rule stated in Award 615, as limited by Award 636 and other subsequent Awards, means that telegraphers with telegraphic duties to perform have the right to perform clerical duties to the extent necessary to fill out their time, but that said clerical duties must be incidental to or in proximity with their work as a telegrapher. See Award 3986. It was never intended that a telegrapher might be severed from his post and sent to an unrelated location to fill out his time, or, that clerical work might be taken from a clerical position at an unrelated point and brought to a telegrapher to be performed by him. Such an interpretation would permit an improper invasion of the rights of clerks under their agreement and render the positions of clerks very insecure."

See also Award 5785 (Wenke).

The work in question was not existing or arising at, or **immediately** adjacent to, the post of the telegrapher, nor was it in close proximity. Accordingly, the Board is of the view that the Agreement was violated.

The claim seeks compensation at a punitive rate for certain specified dates and times. The record demonstrates that Claimant was under pay at the time of the violation. This Referee has recently held, in Award 19899, that full employment is not a deterrent to an award of damages, however, under the facts of this record, the Board is not disposed to grant compensation at the punitive rate (See Award 7816 (Smith)), but rather we will award compensation at the rate which the Claimant would have received had he performed the work in question. See Award 9759 (**LaDriere**).

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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.

A W A R D

Claim No. 1 is sustained.

Claim No. 2 is sustained to the extent stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day Of September 1973.