

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21988
Docket Number CL-21346

John P. Mead, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Kansas City **Terminal** Railway Company

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood
(GL-8226) that :

(1) The Carrier violated the Agreement on the dates of
January 30, February 13 and February 24, and February 26, 1975 when it
required and/or permitted officials and **employees** of another craft to
perform work coming under the Scope of the Clerks **Agreement**.

(2) The Carrier be required to compensate Yard Clerks D. L.
Maheny for one (1) hour at the overtime rate for January 30 and
February 13, 1975; J. Economou for one (1) hour at the overtime rate
for February 24, 1975 and E. L. Vanderpool for one (1) hour at the
overtime rate for February 26, 1975.

OPINION OF BOARD: On the three claim dates, Carrier officers spent
brief periods of time performing work to assist
Claimants in preparation of various reports needed for the turnover of
the yard office and yard to the next shift. On February 13, this work
consisted of assisting Clerk **Maheny** with certain yard reports, on
February 24, it consisted of walking certain tracks in the yard for
purposes of **making** a yard check, and, on February 26, it consisted of
assisting Clerk Vanderpool in the preparation of certain clerical
reports.

Carrier argues that the assistance given here was permissible
under the findings of Third Division Award 17942, which, in relevant
part, held:

"Claimant in this case was the regularly assigned
incumbent of the position in question with all of
its attendant duties. On his particular rest day,
the relief man **assumed** the duties of the position,
but because of his unfamiliarity with such duties,

"required some assistance and guidance from Carrier's supervisor. The Organization avers that the **functions performed** by the Supervisor **came** within the purview of the Clerk's **Agreement**.

A review of the record convinces us that there was no usurpation of clerical duties by the Supervisor, A Clerk was on duty and **under** pay, but evidently needed **some** guidance to **fulfill** his **assignment**. This was essentially what he received. We find no violation. We will deny the claim."

On the other hand, **the** Petitioner argues that the acts here in dispute violated the scope rule of their **agreement**, and particularly Paragraph (b) thereof, reading:

"(b) Positions within the scope of this Agreement belong to the **employees covered** thereby and nothing in this Agreement shall be construed to **permit** the removal of positions **from** the **application** of these roles except in the **manner** provided in Role 60."

Petitioner also cites Rule **41** of the **Agreement**, Authorizing Overtime, which reads in pertinent part:

"(b) Where casual daily **overtime** is authorized and the work attaches to a specific regular assigned position, the regular incumbent shall be assigned if available. If not available the **overtime will** be assigned on a seniority basis to a qualified **employee** on the **same** shift. This paragraph applies to such positions as stenographer, **timekeeper**, cashier, **checkman**, **demurrage** clerk, **yard clerk**, etc. having specific **assignments**" (underscoring supplied).

From a review of the record, we are satisfied that the work here in question, i.e., preparing suit&lists and **walking** tracks for the purpose of preparing yard checks, is work **normally performed** by clerks. In our Award **21382**, involving **similar** rules and **similar facts**, we held:

"However, a perusal of the record indicates that **yardmasters** did indeed prepare handwritten switch lists as well as **make** significant additions to **machine** prepared lists, in addition to their normal functions as indicated above. Since it is quite clear that all additions to switch lists should be prepared by clerks, as well as their initial preparation, these actions by the **yardmasters** constituted a *prim facie* violation of the **agreement**."

This case is clearly distinguishable **from the** facts and findings in 'Third Division Award 17942, *supra*. First, the **claimants** in this case were regular **incumbents** of their respective positions, having been awarded their positions by Carrier. Secondly, we find that the work performed by the Carrier's supervisors was more than just assistance and guidance; they clearly and **unmistakenly performed** clerical work which would have otherwise been **performed by Claimants**.

Given **all** the **circumstances** of this case, we conclude the **performance** of work by supervisors intruded on rights reserved to **Claimants** by the agreement.

The **claim** seeks one hour for each of the Claimants, representative of **time** they would have worked and been **compensated** for had this violation not occurred. Carrier states, and it is not refuted, that the total **time** involved in the three **claims** did not exceed one hour. Based on the foregoing, we find that each of the **Claimants** should be compensated thirty (30) minutes at the pro rata rate.

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.

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Claim sustained in accordance with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.

