

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22309  
Docket Number CL-21665

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
( The Atchison, Topeka and Santa Fe  
( Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8129) that:

(a) Carrier violated the rules of the current Clerks' Agreement at San Bernardino, California on October 24, 1974, when it failed to allow the senior available employee to perform overtime work, and

(b) Mr. A. A. Ware shall now be compensated for eight (8) hours pay at time and one-half October 24, 1974, at rate of Yardmaster Clerk No. 6129 at \$41.90 per day in addition to any compensation he has already received as a result of such violation of Agreement rules.

OPINION OF BOARD: Claimant was the regularly assigned occupant of a Yardmaster Clerk position at San Bernardino, California with hours of 7:00 A.M. to 3:00 P.M. Monday through Friday. His seniority date was October 17, 1939. On Thursday, October 24, 1974, Carrier required an employee, on an overtime basis, to deliver pay checks to employes from 3:00 P.M. to 11:00 P.M. Carrier used a Crew Clerk, Mr. Clapperton, with a seniority date of August 31, 1941 to perform the overtime work. Petitioner argues that Carrier violated Rule 32-G (2) when it used a junior employee to perform the overtime work in question instead of using Claimant.

The pertinent rules provide:

"32-E. Work on Days Not Part of Any Assignment

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by the senior qualified and available off-in-force-reduction employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

"32-G. Assignment of Overtime

In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e.:

- (1) Occupant of position to have prior rights to overtime work on his position.
- (2) If more than one employee is regularly assigned to a class of work, the senior available employee in that class of work will have prior rights to the overtime work.
- (3) If none of the employees are available as provided in (1) and (2) above, the senior available qualified employee at the point who has served notice in writing of his desire will then have prior rights to the overtime work.

NOTE: This principle shall also apply to working on holidays."

The record indicates that the distributing of pay checks had been a part of the regular responsibilities (bulletined as well) of the Crew Clerks at San Bernadino since 1957. Further, it had been a practice of long standing on this property for only certain designated employees (including Crew Clerks at this location) to distribute pay checks. In 1972 by agreement of the parties, the class of work of Crew Clerk and Yardmaster Clerk was combined. From that day forward, Yardmaster Clerks were located in the crew dispatcher's office and performed Crew Caller functions in addition to Yardmaster Clerks' duties. There is no evidence that Yardmaster Clerks, as part of their normal responsibilities, were required to distribute pay checks.

Carrier maintains that Rule 32-E is applicable to this dispute. Under that Rule, according to Carrier, the work in question was work on a day not part of any assignment; all seven-day clerical positions were occupied by the regular incumbents on the claim date and there was need for an additional employee. Under the Rule, therefore, Carrier chose to use the regular employee, Mr. Clapperton, since there were no "off-in-force-reduction employees" available.

The Organization maintains that Rule 32-G (2) is applicable to the **circumstances** herein. It is argued that the work in question was not **overtime** work on a particular position, but the work should have been reserved to the senior **employee** available in the class of work: **Claimant**.

We cannot agree with Petitioner's position. First, and most significant, the work was clearly and specifically by bulletin and practice assigned to Crew Callers, not **Yardmaster** Clerks even though they were both in the same class of service. Without **making** a determination as to whether Rule 32-E or 32-G is applicable, it is evident that under both rules the regularly assigned clerk had first call for the work. As this Board has said on numerous occasions (cf. Award 6600) when work is regularly performed by an **employee** on his work-day, it also belongs to **him** or his position on rest days and on overtime (with certain contractually-specified exceptions). In this dispute since the **Yardmaster** Clerk did not regularly distribute **pay** checks, and the **Crew** Caller did do so, the **Claim** is without foundation; it must be denied.

**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 not violated.

A W A R D

**Claim** denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1979.