

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23073

Docket Number CL-22333

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8499)
that:

1. The Carrier violated the effective Clerks' Agreement when on September 5 and 6, 1976, it failed to afford Clerk Phyllis Dorre an opportunity to perform work on an unassigned day which was work to which she was assigned five days per week.

2. The Carrier shall now compensate Ms. Dorre for eight (8) hours' pay at the time and one-half rate of Position JT-607, for each of dates September 5 and 6, 1976.

OPINION OF BOARD: Claimant Ms. Phyllis Dorre is the regular incumbent of Position JT-607, Accounts Clerk, a five-day position with rest days of Saturday and Sunday. Position JT-607 was established as a new position under date of August 10, 1976. Claimant was the successful applicant when the position was first bulletined. Duties of the position as listed by bulletin are as follows:

"Compile daily waybills for transmittal to Revenue Accounting, along with such statistical data and reports as directed by the Cashier. Maintain time records and fill vacancies when necessary. Maintain demurrage, switching, storage and weighing records and issue bills to cover charges to patron. Operate AAA Billing System.

"Position requires a knowledge of Agency procedures. Applicant must have evidence of clerical ability."

Carrier also had a Demurrage Clerk position, JT-209, duties of which were listed by bulletin as follows:

"Maintain **demurrage**, storage and weighing records **and** issue bills to cover charges for same to patron. **Position** requires a knowledge of d- a g e , switching and storage tariffs.

'Applicant **must** have evidence of clerical ability."

Among the **demurrage** accounts handled by the **incumbent** of Position JT-209 were Mobil, GAP, Phoenix Manufacturing **and** Prairie State Paper Mills. The incumbent of still another position, **JT-597**, referred to **as** Switching Clerk was assigned to handle desmrrage for only United States Steel Corp. Duties of Position JT-597 are listed by bulletin as follows:

"**Maintain** demurrage, switching, storage and weighing **records**, prepare bills to cover charges to customers and/or other railroads. Prepares constructive placement notices to patrons, controls switch orders and miscellaneous clerical work as assigned."

At the time of the instant claim, **Mr. W. Pelton** held Position JT-597.

Under date of August 30, 1976, Carrier abolished Position XC-209 and the demurrage duties were given to the incumbent of the recently created Position **JT-607**. A backlog of work had existed in Position JT-209 at the time it was abolished due in part to the excessive absence of the most recent incumbent of **that** position. The backlog accordingly fell to the incumbent of the successor position to **JT-209**; namely, to the Claimant.

At Carrier's instruction, on September 2, 3, 7, **8**, and 27, Ms. Dorre **spent full time** in training an inexperienced employewho had recently been awarded another desmrrage position, JT-612. As a result, Ms. **Dorre's demurrage** work fell well behind. Carrier, in order to have the demurrage accounting for the several industries involved (Mobil, GAP, etc.) brought up-to-date, elected to **have** the work performed on Saturday and Sunday, September 5 and 6, 1976. Since there were no furloughed **employees** available, the work was required to be performed on an overtime **basis**. Carrier assigned Mr. **Pelton**, incumbent of Position JT-597, to work his rest days to perform the work. Claimant was not afforded an opportunity to do the work in question on her rest days.

A claim was filed **by the Organization on behalf** of Claimant on October 7, 1976. The claim was appealed up to and **including** the highest Carrier officer designated to handle such **disputes**. Conference was held on July 13, 1977, resulting in impasse. Accordingly, the dispute is properly before the Board for adjudication.

Of relevance to the present issue is **Rule 42** of the Agreement. Sections **(e)**, **(f)**, and **(g)** read as follows:

"RULE 42

OVERTIME

*** * * ***

(e) 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 an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular **employee**.

(f) In working overtime before or after assigned hours, **employees** regularly assigned to class of work for which overtime is necessary shall be given preference; the **same** principle shall apply to working rest days and holidays. It is recognized that when **wertime** work is necessary on a position the **incumbent** has the right and **responsibility** to perform such **overtime** work. If for good **and** sufficient reasons, however, **the** incumbent is not able to perform such wertime work it will be offered **on** a seniority basis to the available qualified employee in that location **and** **department**. If such wertime work is declined by all **other** employer, to whom it is offered the **junior** available qualified employee will be required to perform the work. The Carrier will give **notice** as far in advance as possible to **employees** required to perform **overtime** work.

(g) An employee denied wertime work which he is rightfully entitled to will be compensated **at** the **time** and one-half rate, the same as if he had **performed** the work."

Upon consideration of the entire record we do not **find** persuasive Carrier's assertion that because of the **similarity** of position descriptions, the wertime work at issue belonged to **Mr. Pelton** as senior to Claimant. Further, careful reading of Rule 42, specifically Section **(e)**, **indicates** that wertime work shall, **in** cases such as the present one, be assigned to "the regular employee." We are in concurrence with the interpretation of "regular employee" found in Award 3-13142:

"..... it is clear that the 'regular employs' **being** referred to is the **employee** who is **assigned** to a position to which the involved work would **normally** be assigned if it came up in the course of an assigned day of that position; or, to put it in other, more commonly used **language, Rule 20(e) in** this Agreement intends (in proper order of priority) to give the wertime work to the **employee** on whose job it usually is performed."

(See also, Award No. 3-7175). The wertime work performed on September 5 and 6, 1976, resulted at least in part because Carrier required Claimant to perform extra duties (training) which **put her behind in her regular** work. We find that Carrier then erroneously assigned work to **Mr. Pelton** which was, according to Rule 42(e), properly **Claimant's**. The Claim is therefore sustained.

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;

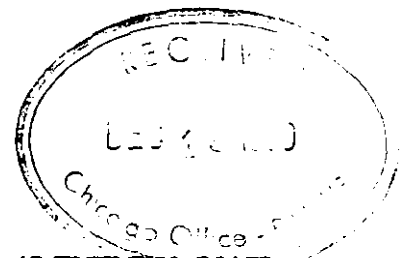
That the Carrier and the **Employees** involved in this dispute are respectively Carrier **and** Employees within the weaning of the Railway Labor Act, as approved **June 21, 1934**;

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 sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **21st** day of **November 1980**.