

Award No. 2706  
Docket No. CL-2744

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

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

**ILLINOIS CENTRAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood that: (1) the carrier violated the rules of the Clerks' Agreement when it refused to assign yard clerical work to the regular yard clerks on their seventh day at Dyersburg, Tennessee, and (2) H. S. Newman and J. W. Smith be each paid eight hours at penalty rate at yard clerk rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** At Dyersburg, Tennessee, prior to February 10, 1943, two yard clerks (H. S. Newman and J. W. Smith) had been working seven days a week for a period of several months and received penalty pay for the seventh day as provided in Rule 42 of our Clerks' Agreement.

On February 11, 1943, Yard Clerk J. W. Smith was not permitted to work and his position was filled by Isaac F. Campbell, Switchman, listed as rank No. 7 with date of September 16, 1941 on the seniority roster of Yardmen at Dyersburg, Tennessee.

On February 12, 1943, Yard Clerk H. S. Newman was not permitted to work on his regular position and it was filled by Isaac Campbell, Switchman, listed on seniority roster of yardmen as shown above.

The earnings of the three men for February and March 1943 are as follows:

	<b>Yard Clerk J. W. Smith</b>	<b>Yard Clerk H. S. Newman</b>	<b>Switchman I. F. Campbell</b>
February	\$173.00	\$157.00	\$160.00
March	170.00	165.00	102.00

Switchman Campbell worked as switchman at Dyersburg on February 10, worked as yard clerk February 11 and 12 and worked again as switchman on February 13, 1943.

Since February 13, 1943, the yard clerks have been worked six days a week and no one worked on the seventh day account switching crews being only worked six days a week since that time.

Employees immediately protested this case, filed claims for wage loss in amount of one day at penalty time for each of the two yard clerks involved. They claimed violation of Rules 1, 3, 4 and 5 of the Clerks' Agreement and directed the carrier's attention to Awards 1121 and 1122 of the Third Division.

The agreement contains very definite rules defining how seniority shall be established. It spells out in detail how it must be protected to be preserved. If these rules can be waived or disregarded to preclude seniority to an individual under the circumstances herein described, then the whole agreement is meaningless and illusory.

The summarized position of the Carrier is:

1. There has been no violation of any rule in the current rules agreement.
2. The carrier acted entirely within its rights in endeavoring to provide the necessary relief for its employees as required under the rules.
3. To sustain the position of the employees in this claim would require placing in the agreement new rules not now provided for and not within the province of this Board.

The Carrier therefore requests that the claim be dismissed.

**OPINION OF BOARD:** Claimant J. W. Smith was the regularly assigned occupant of the position of Yard Clerk at Dyersburg, Tennessee, a seven-day position with Thursday off as a day of rest. Claimant H. S. Newman was the regularly assigned occupant of the position of Yard Clerk at the same point, it being a seven-day position with Friday off as a day of rest. Prior to February 11, 1943, these two claimants had been working the full seven days each week and receiving time and one-half for the seventh day. On February 11, 1943, a Thursday, Smith was not permitted to work and the position was filled on that day by I. F. Campbell, a switchman with seniority as a yardman. On February 12, 1943, a Friday, Newman was not permitted to work and the position was filled on that day by Campbell. Claimants contend that this was a violation of the current agreement. The Carrier argues that Campbell was a new employee in working as a clerk with seniority as of the date his pay as a clerk started, to wit, February 11, 1943, and that he had a right to the work superior to that of the occupants of the regularly assigned positions.

The work in question belonged to the Clerks. There were no furloughed or extra men available. The claimants were not entitled to the work as a matter of right. Award 2618. If Campbell was entitled to work as a clerk, he could properly do the work in preference to Smith and Newman. If Campbell had no rights as a clerk, then Smith and Newman should have been called. The question resolves itself into one as to whether Campbell was entitled to perform clerk's work on the days in question.

The record shows that Campbell held seniority as of September 16, 1941, on the seniority roster of Yardmen. He held no seniority rights as a clerk prior to February 11, 1943. The Carrier contends that his seniority as a clerk was fixed as of the time his pay as a clerk started as provided by Rule 3 of the current agreement. The record shows that Campbell worked as a switchman under the Yardmen's Agreement on February 10, 1943. After working the two days as a clerk on February 11 and 12, 1943, he returned to his work as a switchman and never again performed work under the Clerks' Agreement. The record shows that in February, 1943, Campbell received wages in the amount of \$160.97, only \$11.71 of which was paid him for clerk's work. In March, 1943, he received wages in the amount of \$102.52, none of which was for clerk's work. His name did not appear on the Clerks' roster in January, 1943, although it was shown on that roster in January, 1944.

We think this record shows an intent on the part of the Carrier to avoid the payment of overtime rates to the claimants by using an employee under a different branch of service in their stead. We do not think Campbell is shown to be a bona fide new employee within the meaning of and as contemplated by Rule 3. This Board is committed to the view that an employee in some other

service may not be used to relieve a clerk on his assigned day of rest. Award 2052. See also United States Railroad Labor Board Decision No. 3341. If this be true, a carrier cannot be permitted to violate the spirit of the rule by the expedient of giving such other employe seniority as a clerk as of the date his pay started on such relief job. This does not constitute him as a new employe within the meaning of the rule. We think all the evidence and circumstances show an intent on the part of the Carrier to circumvent the rule which prevents the use of employes in one class of service from performing relief work in another. Such action constitutes a violation of the current agreement.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 Carrier violated the current Agreement as claimed.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1944.