

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement when it failed to call Clerk R. H. Cormier to perform overtime work on each of the following dates in 1946: April 10, 12, 15, 17, 19, 22, 24, 26, 29, May 1, 3, 6, 8, 10, 13, 15, and 17, and that Clerk R. H. Cormier be compensated for the monetary loss sustained by him because he was not called to perform the overtime work on the dates listed. The claim is for four hours on each of the seventeen dates, or a total of 68 hours, at the overtime rate of his position, \$1.39 per hour, or a total of \$94.52.

EMPLOYEES' STATEMENT OF FACTS: Effective April 10, 1946, the carrier found it necessary to bring up to date certain work known as "checking of foreign line abstracts against M. & St. L. abstracts" in the Interline Department of the office of Auditor of Revenues, and accordingly, effective April 10, 1946, assigned the discharge of that work on overtime to the following seven (7) employees:

	<u>Rate</u>	<u>Overtime Rate Per Hour</u>	<u>Hours Worked</u>
P. J. McAndrews Head Interline Clerk	\$286.00 mo.	\$2.10	58
C. H. Heinecke Traveling Auditor	281.00 mo.	2.07	68
W. E. Heinecke Revising Clerk	8.10 day	1.52	68
H. E. Falldin Revising Clerk	8.24 day	1.55	68
S. A. Sivanich Interline Clerk	8.53 day	1.60	68
M. M. Scallon Interline Clerk	7.91 day	1.48	68
G. T. Pierce Interline Clerk	7.81 day	1.46	67

The work in question consisted of checking reporting road figures against Minneapolis & St. Louis (forwarding road) figures shown on M. & St. L. Form 1020 (copy attached) and noting discrepancies in advance and prepay, and was performed under the schedule outlined in Exhibit "A".

Clerk R. H. Cormier, who regularly performs, on daily assignment, the duties outlined, was not assigned to overtime and on April 13, 1946, formally filed claim to such work. On April 15, 1946, the General Chairman addressed a letter to Mr. E. G. Hanson, Auditor of Revenues, calling attention to alleged violation of agreement and requested adjustment of dispute. See Exhibit "B".

emergency when advance authority is not obtainable. When it is practicable and will not interfere with the operations the employe whose regular duties are to be performed on call or overtime shall have preference to such work."

The attention of Your Honorable Board is directed to the rule quoted above. There is no dispute relative to the first paragraph of the rule. It is the second paragraph with which we are concerned. On February 1, 1946, through regular application of assignment and promotion rules, Clerk Cormier was assigned the position of Interline Clerk, charged with the responsibility of checking foreign line reporting figures against M&STL (forwarding line) figures and the balancing of the figures of various roads reporting business received from the Minneapolis & St. Louis Railway Company, a position Clerk Cormier had held for a two or three week period in 1942 and from which position he was displaced at that time by a senior employe exercising seniority rights.

The second paragraph of Rule 42 specifically states that "* * * when it is practicable and will not interfere with the operations, the employe whose regular duties are to be performed on call or overtime shall have preference to such work". Inasmuch as Clerk Cormier, for a two or three-week period in 1942 and from February 1, 1946 had performed the duties in question on regular daily assignment and continued to perform such duties until October 1, 1946 when he was assigned another position, it is apparent the officer in charge found it practicable and without interference to the operations to have Clerk Cormier perform those duties.

If it is practicable and does not interfere with the operations to have Clerk Cormier perform the duties in question for eight hours each day, it is the position of the employees that it is then practicable and will not interfere with the operations to have had Clerk Cormier perform the same duties on overtime and the carrier violated Rule 42 in not assigning Clerk Cormier to the overtime assignment.

The Carrier having violated the agreement as shown, we respectfully request that your Honorable Board sustain our claim as presented.

POSITION OF CARRIER: Rule 42, relied on by the General Chairman of the Clerks in presenting the instant claim, reads in part as follows: "When it is practicable and will not interfere with the operations * * *". That part of the rule was written into the agreement to meet conditions and situations similar to those that prevailed in the instant claim.

That Carrier acted in good faith and judgment in using seven experienced clerks on the work which was to be quickly brought up to date, and did not use Clerk Cormier, who was inexperienced to the extent that the work, in Carrier's opinion, would not only have been delayed or retarded, but also might have resulted in a loss of money to the Carrier due to inaccurate checking, is evidenced by the fact that higher rated employees were used, as has hereinbefore been shown.

Carrier feels that provisions of Rule 42 were complied with, and on the basis of facts herein outlined, feels the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Board of Adjustment claims the Carrier violated their Agreement in failing to call Clerk R. H. Cormier to do certain work on an overtime basis on the dates set forth in its claim. It asks that Cormier be compensated for the loss sustained by reason thereof. The basis for the claim is that the Carrier failed to comply with the provisions of Rule 42.

Rule 42, insofar as here material, provides:

"When it is practicable and will not interfere with the operations the employe whose regular duties are to be performed on call or overtime shall have preference to such work."

By previous Awards of this Board the Carrier, under the provisions of this rule, is required, whenever it is possible and will not interfere with the operations, to give employees regularly doing the same class of work prefer-

ence when it is necessary to have such work done on a call or overtime basis. See Awards 68, 420, 1630, 2043, 2044, and 2101.

R. H. Cormier entered the service of the Carrier on January 2, 1941. On February 1, 1946, he was assigned to the position of Interline Clerk. During January of 1946 he performed work of a similar class as here involved and, after the first of February, 1946, he devoted about 25% of the time on his regular position in doing the same class of work.

The Carrier, because of I.C.C. requirements, found it necessary to immediately bring up to date certain work consisting of the checking of the Carrier's Agents' interline forwarded abstracts against Carriers' received abstracts. Beginning on April 10, 1946, and continuing on the days set forth in the claim, seven employees in the Carrier's office of Auditor of Revenues were assigned to perform this work on an overtime basis. This is the office in which the claimant was working.

S. A. Sivanich, one of the seven employees used, although an experienced and able clerk, had never had actual experience in the class of work here involved nor was this class of work any part of his regular duties. On the other hand, while claimant had not been doing this class of work for any great length of time it was, however, the class of work he was doing on his regular assignment and there is nothing in the record to show that he was not doing it satisfactorily. The record clearly indicates that if the work had been done during the regular week-day assignments the claimant would have been required to perform his share thereof and that Clerk Sivanich would have performed no part of it.

The record establishes that it was possible for the Carrier to have called Cormier to help do this work on an overtime basis and to have done so would not have interfered with these operations nor with his regular work. Therefore, under the circumstances here, its failure to give this claimant an opportunity to help perform this work on an overtime basis, on the several days when it was performed, was in violation of Rule 42.

As to the basis of its allowance we have said in Award No. 3271:

"The rule is that the penalty rate for work lost because it was improperly given to one not entitled to it under the agreement, is the rate which the employee to whom it was regularly assigned would receive if he had performed the work."

Since this work was assigned on an overtime basis the employees to whom it was regularly assigned received pay accordingly. Consequently, it is allowed on that basis.

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 Employee involved in this dispute are respectively carrier and employee 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 Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.