

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the current Clerks' Agreement by requiring Clerks M. L. Panella and J. L. Kulikoski to suspend work on their regular assignments and assigning them to other positions to absorb overtime, and that

(a) Clerk M. L. Panella shall now be allowed an additional day's pay at pro rata rate for this violation on each of the following dates: September 7th and 28th, 1947, October 9th and 11th, December 4th and 6th, 1947, February 1st, 8th, 15th, 22nd, 1948 and March 7, 1948, and that

(b) Clerk J. L. Kulikoski shall now be allowed an additional day's pay at pro rata rate for this violation on each of the following dates: September 27th and 28th, 1947, October 9th and 11th, 1947; November 6th and 20th, 1947; December 4th and 6th, 1947 and February 9th, 10th and 19th, 1948.

EMPLOYEES' STATEMENT OF FACTS: Under date of July 29th, 1947 Carrier issued Susquehanna Division Transportation Department Bulletin No. 26.47 advertising for bid Position No. 26, Relief Clerk at Binghamton, New York. Clerk M. L. Panella was assigned to Position No. 26 effective August 9, 1947. Under the schedule established in Bulletin No. 26.47 Clerk Panella was required to relieve Clerk E. J. Murray on Position of record Clerk on Sundays. On each of the dates for which time is claimed Relief Clerk Position No. 26 was filled by an Extra Clerk and Clerk Panella was required to cover Position of Waybill Clerk in place of Clerk Page.

Under date of July 18, 1947 Carrier issued Susquehanna Division Transportation Department Bulletin No. 24.47 advertising for bid Position No. 19 Yard Clerk at Binghamton, New York, New York 11:00 P.M. to 7:00 A.M., daily except Wednesday. Effective July 24, 1947 Position No. 19 was awarded to Clerk J. L. Kulikoski.

On each date time is claimed for Clerk Kulikoski he was required to suspend work on Position No. 19 and was assigned to cover the position of Waybill Clerk L. A. Hayward while an Extra Clerk was assigned to work Position No. 19 at pro rata rate.

POSITION OF EMPLOYEES: There is in evidence an Agreement between the parties hereto bearing effective date of January 1, 1941 in which the following Rules appear:

OPINION OF BOARD: The facts are not in dispute. Claimant Panella was regularly assigned by bulletin to Relief Yard Clerk, Binghamton, New York, and on Sunday was regularly required to relieve on the position of Record Clerk. On the days in question, Claimant was removed from his regular position of relief and required to fill vacancies of other regularly assigned positions. All positions or employees involved had the same hours of work. Claimant Kulikoski also held a regular Yard Clerk position, assigned by bulletin at Binghamton, New York, with Wednesday as his rest day. On the days in question he was removed from his regularly assigned position, and required to fill vacancies of other regularly assigned positions, during the same hours as his regular position. The record states, and is not denied by the Carrier, that prior to the days in question the employees, through their representatives, had protested the action of the Carrier in re-assigning employees from their regularly assigned positions.

The Employees rely on Rules 3, 7, 25 and 28 and allege that the action of the Carrier is in violation of said rules and the Agreement. There is no dispute that Claimants held regularly assigned positions and that they were required by Carrier to work other positions on the days in question. Their regular positions were not abolished nor did they resign from them on the days in question. In Award No. 4499 the facts and issues were in accord with the instant case, and therein it was held that an employee cannot properly be required to suspend work on his regular position to work on another except in emergencies. To violate that principle is considered a suspension of work to absorb overtime, and there were cited Awards 2346, 2695, 2823, 2859, 3417, 4075 and 4352. We concur with the principle of that Award, and in this case we must hold that the action of the Carrier complained of was in violation of the Agreement.

The two Awards cited by the Carrier can be distinguished from the facts of this case and are not applicable. Also, the Carrier has called attention to the prior practice of the parties in the settlement of like disputes as controlling here. We are of the opinion that prior practice cannot effect a change in the meaning of the Agreement. It follows that the claim shall be sustained.

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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.