

Award No. 4831

Docket No. CL-4828

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**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, particularly Rule 4-A-1 (a), Ticket Office, Wilmington, Delaware, Maryland Division, on April 11, 1947, by refusing to allow Clerk Annette Sonaio wages due for thirty minutes overtime service performed.

(b) Clerk Annette Sonaio should be compensated at time and one-half for this service. (Docket E-431.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimant in this case is an employee holding a regular position covered by the Scope of that Rules Agreement having seniority standing in Group 1 on the Maryland Division of the Carrier. On the date in question the claimant held a position of Ticket Clerk at the Ticket Office, Wilmington, Delaware, with a tour of duty from 3:15 P. M. to 11:45 P. M. Ticket Clerks at this station have been allowed 30 minutes prior to the close of their tour of duty for the purpose of balancing their accounts and completing necessary reports in connection with their sales.

On April 11, 1947, between the hours of 10:00 P. M. and 11:15 P. M., the Claimant was the only ticket clerk on duty. During her tour of duty she sold 79 tickets, which had to be recorded for office records. Her total

is only a small portion of her entire tour of duty. The Carrier is not attempting to argue that the Claimant failed to properly perform her work and feels that this feature of the claim is not pertinent. Assuming that the Claimant did make every effort to complete her work within the allotted time and was unable to do so, the remedy was not for her to decide to work overtime of her own volition. If it appeared that the set-up as a whole, providing for a period of time for Ticket Clerks to complete their work, was not a proper one, then claim should have been made on that basis, but again the Carrier submits that it was not proper for the Claimant, or any other employee, to take steps such as the Claimant did to remedy a situation of this kind.

The Carrier submits that none of the contentions of the General Chairman support the claim in this case and in view of the circumstances set forth above the claim should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that, under the applicable Agreement between the parties to this dispute, the Claimant is not entitled to the compensation claimed.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant holds a position as Ticket Clerk at the Ticket Office, Wilmington, Delaware, with a tour of duty from 3:15 P. M. to 11:45 P. M. Ticket Clerks at this station are allowed thirty minutes prior to the close of their tour of duty to balance their accounts and complete necessary reports of the day's business. On April 11, 1947, Claimant was unable to balance her account and complete her report within the thirty minutes allowed. She worked an additional thirty minutes beyond her eight hour assignment. Carrier refused to pay her thirty minutes' overtime for the reason that it was not authorized by a superior officer. The Organization contends that Claimant should be compensated for the additional thirty minutes at the time and one-half rate.

The record shows that the day's business was above normal. No contention is advanced that it was not necessary to work the additional thirty minutes to complete her work for the day. Rule 4-A-1 (a) says in part:

"Time worked in excess of eight hours in any twenty-four hour period will be considered as overtime and paid for at the rate of time and one-half."

The record shows that the Agreement in force prior to the current Agreement contained the following rule:

"4-C-2. No overtime hours will be worked except by direction of proper authority."

No such rule appears in the current Agreement. Some reason for its removal must have existed. The Organization says that it was removed because it was found that on evening and night tricks, and at remote locations, supervisors were not always available when necessary work had to be performed on an overtime basis. It is the contention of the Organization that former Rule 4-C-2 was taken out of the current Agreement to permit claims for overtime in the situations mentioned.

We agree with the Carrier that it is a managerial prerogative to determine the necessity for the performance of overtime. Such prerogative may, of course, be restricted by agreement. In the present case, it is shown that former Agreements limited the working of overtime hours to those worked by the direction of management. The removal of this rule from the Agreement indicates an intention to change the manner of authorizing overtime work, although the working of overtime remains in the exclusive control of the Carrier. The elimination of Rule 4-C-2 indicates that Carrier may authorize overtime by an implied as well as by direct agreement.

In the present case, Claimant was the only ticket clerk on duty after 10:00 P. M. The Chief Clerk was on duty and must have known that she was working after the close of her assigned tour of duty. He permitted her to do so without objection thereto on his part. It is not disputed that Claimant actually worked the thirty minutes in question. We think under the situation here shown, Claimant was impliedly authorized to work this overtime within the meaning of the Agreement before us when it is construed in the light of its past history. We point out that unless it clearly appears that the overtime was necessary and performed under circumstances indicating that the Carrier had implied its assent thereto, no basis for a claim exists. We point out further that any abuses growing out of this interpretation of the Agreement may be handled under the discipline rule. But the contract before us, when construed as the parties intended, does not permit a supervisor to sit idly by and permit necessary overtime to be worked and then to deny the claim on the technical basis that the work was not directly authorized by him.

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 31st day of March, 1950.