

Award No. 5601
Docket No. CL-5535

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that, the Carrier has violated and continues to violate the Clerk's Agreement:

(a) When it required regularly assigned Stationery Clerk, H. R. Dennis, to suspend work on his regular assignment and forego the performance of his regular assigned duties and further required him to assume and perform the duties of a Stock Clerk for various periods of time as hereinafter set forth.

(b) That H. R. Dennis be paid in addition to his regular rate (\$11.35 per day) on the minute basis for all such time he was required to suspend work on his regular assignment (Stationery Clerk) to perform Stock Clerk duties and work.

(c) Payment on the minute basis to be on basis of his regular rate.

EMPLOYEES' STATEMENT OF FACTS: Position No. C-80, Stationery Clerk, Decatur, Ill., Storeroom, was advertised October 14, 1949, account vacancy of position; bulletin No. G-990 quoted below:

**"ILLINOIS TERMINAL RAILROAD COMPANY
OFFICE OF SUPERINTENDENT
BULLETIN NO. G-990**

Springfield, Ill.
October 14, 1949

Clerical Employees
Sen. Dists. Nos. 3, 4 & 5

Position—C-80, Staty. Clerk, Decatur Storeroom, vacant effective 10/16/49 account W. L. Ward bidding in C-90 per G-979 of October 7, 1949.

Salary—\$11.35 per day.

Hours—7:30 A. M. to 12:00 Noon. 12:30 P. M. to 4:00 P. M.

Remarks—This is a 5-day assignment with Sat. & Sun. as the off-days.

OPINION OF BOARD: On October 21, 1949, Carrier bulletined a position designated as C-80 Stationery Clerk at its Decatur Storeroom. The said position was bid in by claimant and he was assigned to the position, effective October 24, 1949. Following claimant's assignment to this position on various dates set forth in the record, he was required to perform work of a nature which was generally assigned to the position of stock clerk.

The Employees contend that the assignment of the claimant to assist in the work generally assigned to the stock clerk position is violative of the seniority rules and Rule 17 (a) of the Agreement, which rule reads as follows:

"(a) Overtime will be allowed at the rate of time and one-half in addition to their regular pay and employees will not be required to suspend work to absorb overtime."

The Carrier contends that the assignment of this work is proper under Rule 19, "Preservation of Rates," and that such work has been assigned to employees holding the stationary clerk position since 1929, that the stationery clerk duties on this job do not require full time and the surplus time has been utilized as a stock clerk. The Carrier's assertion of the practice in existence since 1929 is supported by documentary evidence not effectively refuted by the Employees.

Two factors militate against the sustaining of this claim: (1) It is not shown that the stock clerk work performed by the claimant is work which otherwise would have had to be performed on an overtime basis; (2) the consistent practice of assigning the stationery clerk to assist with work of the stock clerk position is a clear indication that such work was a part of the regularly assigned duties of the stationery clerk's position. The existence of these factors militate against a finding that claimant was required to suspend work on regularly assigned work of his position or if he had that he was required to absorb overtime in doing so. (Compare Awards 5109 and 5331.)

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.