

Award No. 5640

Docket No. CL-5605

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That Carrier violated rules of the Clerks' Agreement when on dates hereinafter stated employees named were arbitrarily removed during their regular assigned hours from their regularly assigned positions as Clerks at Lindenwood to perform work on other positions at Ewing Avenue. The two named points, i.e., Ewing Avenue and Lindenwood, are separate points and/or offices—Approximately six miles apart on the St. Louis Division, St. Louis, Missouri—of the Carrier.

(2) That the involved employees be additionally paid for the time within their regular assigned hours they were required to perform work on other than their regularly assigned positions, namely:

Date	Name	Regular Position	Assignment Hours	Away from Assigned Headquarters	Time Claimed Hours	Daily Rate
3-12-50	James Abbott	Car Record Clerk	4p-12m	5p-10:00p	5	\$11.94
		Job 52				
3-19-50	R. L. Morse	Yard Clerk	3p-11 p	3p-10:00p	7	11.90
		Job 27				
3-26-50	R. L. Morse	" "	3p-11 p	3p- 9:00p	6	11.90
4- 2-50	R. L. Morse	" "	3p-11 p	3p-10:00p	7	11.90
4- 9-50	J. Bishop	" "	3p-11 p	3p- 9:30p	6½	11.90
4-16-50	R. L. Morse	" "	3p-11 p	3p-11:00p	8	11.90

EMPLOYEES' STATEMENT OF FACTS: The Carrier Maintains yards clerical forces at what is commonly known as Ewing Avenue and Lindenwood on the St. Louis Terminal Division at St. Louis, Missouri. The force comprised, during the period involved in this claim:

under no circumstances should they be awarded additional pay for performing service on their regular assigned work day where such work was yard clerical work to which they were assigned and during their regular assigned hours on their own seniority district.

Our position is the handling complained of did not violate the working agreement.

All data submitted in support of Carrier's position have been presented to the employees and made a part of the particular question in issue.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the question whether Claimants were required to suspend work during regular hours to absorb overtime.

Within the St. Louis Terminal seniority district are seven facilities, consisting of yards and stations. Lindenwood Yard is the principal yard and Ewing Avenue Yard is an interchange point. They are six miles apart. While each facility has a regularly assigned force, employees subject to the Clerks' Agreement are not employed at each of these seven locations. Thus, each facility is not within itself wholly separate and independent.

The seniority roster of yard clerical employees in St. Louis Terminal is maintained in Lindenwood Yard office and new positions or vacancies at Ewing Avenue Yard are filled from employees on this common seniority roster. And when Yard Clerks at Ewing Avenue desire to lay off or to be relieved for vacations, sickness, etc., such matters are handled with the Chief Yard Clerk at Lindenwood.

In practice it appears that the clerical employees at Lindenwood customarily report to the Chief Yard Clerk at that point and go off duty there; and the Yard Clerks at Ewing Avenue customarily report to the Yardmaster at that point and go off duty there. Moreover, in practice the location of positions has been customarily bulletined as "Lindenwood" or "Ewing Avenue" and not "St. Louis Terminal" or "Lindenwood and elsewhere in St. Louis Terminal as needed"; and the title and character of work of positions has not been customarily bulletined in such a way as to indicate that performance of work will be required in the Terminal elsewhere than at the location specified. Assignments have apparently been made to positions at these Yards in the same manner as positions at various station locations on an operating division of a railroad.

On the six Sundays in question, there were regularly established at Lindenwood seven 7-day positions working on second shift, among others one Car Record Clerk and three Yard Clerk positions; and at Ewing Avenue five Yard Clerk positions, one a 6-day position and the other four 7-day positions.

The Carrier had begun to experience delays at Ewing Avenue on Sundays, due among other things to waiting for the yard clerk to check and card interchange transfers and to perform other related work. These delays at Ewing Avenue were, in turn adversely affecting train and yard performance at Lindenwood with the result that the services of the clerks there were not being effectively utilized.

To remedy this situation the Carrier directed one of the Claimants, who were all occupants of clerical positions at Lindenwood, to assist at Ewing Avenue on the second shift on each of six Sundays. There was but one Yard Clerk on duty at Ewing Avenue during that shift, Sunday being the day off of the other yard Clerk who was the occupant of the 6-day position. Each Claimant performed this work at Ewing Avenue, going both on and off duty at Lindenwood.

The Carrier found this traveling back and forth to be uneconomical and the General Chairman was complaining about the use of Lindenwood clerks at Ewing Avenue. The situation was finally remedied, apparently to the

satisfaction of all concerned, by increasing one position at Ewing Avenue from 6 to 7 days and by reducing one position at Lindenwood from 7 to 6 days.

We take it to be established by the record that there was a chronic excess of work at Ewing Avenue and a corresponding chronic excess of clerical personnel at Lindenwood; that the hours worked by each Claimant at Ewing Avenue (exclusive of travel time) were the same as the hours assigned at Lindenwood; and that Claimants were paid their regular rates which were equal to or greater than the rates of the Yard Clerk positions at Ewing Avenue.

FIRST: The only evidence in the record bearing upon what were the assignments of Claimants is the bulletins and what we understand the practice to have been. A bulletin may not amount to a job description and the dominant purpose of a specification of location in a bulletin may be to advise an employee where he is to report and go off duty. But in the physical setting of the several facilities in St. Louis Terminal, the specification of a particular facility in the bulletins, coupled with the customary practice of assignment to one specific facility, leads to the conclusion that Claimants were not assigned to work at large throughout the Terminal. It follows that the regularly assigned positions of Claimants comprised the performance of work at Lindenwood Yard only. (See Award 5315; compare Award 4627).

SECOND: The Carrier was at liberty to assign the Claimants to this work at Ewing Avenue within the limitations of the Agreement (Award 5331). The Brotherhood contends that the claim is supported by Rule 47 which provides that employees shall not be required to suspend work during regular hours to absorb overtime.

These Claimants did not suspend work "during regular hours"; nor did they cross seniority lines. However, Awards 3417 and 3418 laid it down that such a Rule means suspend work "on his regularly assigned position"; and even though the hours are the same and seniority lines are not crossed, such has been the uniform view ever since (Awards 3770, 4352, 4499, 4500, 4692, 5105, 5315, 5330 and 5578).

Prior awards of this Board also appear to raise a presumption that overtime is absorbed when an employee is suspended from his regular assignment to work another over an extended period. But the presumption disappears upon the production of contrary evidence (Award 5625).

What does the record show?

No overtime was absorbed at Lindenwood for the record shows the presence of one more clerk than was needed there during the second shift on Sundays.

The work performed at Ewing Avenue was work which was not a part of any assignment. It was work which apparently had to be performed only on the day when the Ewing Avenue clerk who held the 6-day position took his day off. Failing the change in assignments which was later made, the work should have been performed at straight time by an available extra or unassigned employee who had not had 40 hours of work that week; and in all other cases at time and one-half by the regular employee at Ewing Avenue (Rule 43 (g)).

Thus, whether any overtime was absorbed at Ewing Avenue depends upon whether there was such an available extra or unassigned employee. If there was, no overtime was absorbed at Ewing Avenue; but if there was not, the regular employee, whose day off it was, was entitled to the work at time and one-half (See Award 2341).

There is no affirmative evidence in the record to show that there was an available extra or unassigned employee who would not have had 40 hours of

work that week; nor is there any affirmative evidence to show that the regular employe at Ewing Avenue was unavailable.

It is therefore established by the record, there being no affirmative evidence to the contrary, that overtime was in fact absorbed at Ewing Avenue on the Sundays in question.

The total claim presented here is for 2 hours and 25 minutes more than the claim submitted on the property (see Employes' Exhibit 8 (a) Ex Parte Submission). The claim should be sustained on the latter 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 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 Agreement was violated as above found.

AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 8th day of February, 1952.