

Award No. 5656

Docket No. CL-5489

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, 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 violated the Clerk's Agreement:

(a) When it required regular assigned Relief Clerk, A. M. Jones to suspend work on his regular assignment January 15 and 16, 1950, position No. C-46, relieving position No. C-43 A.M. Baggage Clerk, Peoria, Illinois, hours of service 6:00 A.M.-3:00 P.M. inclusive, and perform the assigned work on position No. C-91, Baggage Clerk, East Peoria, Illinois, hours of service 3:15 P.M.-12:15 A.M. inclusive, for the purpose of breaking in a new employe who had been assigned to position No. C-91.

(b) That relief Clerk Jones be paid the rate of his regular assignment (\$10.93) per day for each day held from his position, in addition to the amount paid for working position No. C-91.

EMPLOYEES' STATEMENT OF FACTS: Relief Clerk A. M. Jones was regularly assigned to position No. C-46, Relief Clerk, the assignment of which consisted of the following:

Position	Title	Location	Days Worked	Hours of Service	Rate of Pay
C-43	A. M. Baggage Clerk,	Peoria	Sun.	6:00 A. M.- 3:00 P. M.	\$10.93
C-43	A. M. Baggage Clerk,	Peoria	Mon.	6:00 A. M.- 3:00 P. M.	\$10.93
C-44	P. M. Baggage Clerk,	Peoria	Tues.	3:15 P. M.-12:15 A. M.	\$10.93
C-44	P. M. Baggage Clerk,	Peoria	Wed.	3:15 P. M.-12:15 A. M.	\$10.93
C-34	Yard Clerk	East Peoria	Thurs.	12:01 P. M.- 8:00 P. M.	\$11.41

Off Days Friday & Saturday.

On January 15 (Sunday) and January 16 (Monday) 1950, Relief Clerk Jones was required by the carrier to suspend work on his regular assignment, position No. C-46, which on the dates in question, was furnishing relief on position No. C-43, A.M. Baggage Clerk, Peoria, Illinois; and required to break in a new employe who had been assigned to position No. C-91, Baggage Clerk, East Peoria, Illinois, hours of service 3:15 P.M.-12:15 A.M. Mr. Jones

for working off his regular assignment; the question involved being whether or not he is entitled to pay for work which he did not perform on his regular assignment in addition to compensation which has been paid him.

POSITION OF CARRIER: It is the position of the Carrier that the "Interpretation of Rule 14" dated December 2, 1949, was written to cover just such an emergency as here existed and that the Carrier has fully complied with this Interpretation. The Carrier further maintains that Rule 19, "Preservation of Rates" on Page 26 of the Agreement effective September 1, 1949, contemplates just such emergency as here existed and that it has likewise complied with this Rule. We find nothing in the Agreement of September 1, 1949, which obligates the Carrier to pay, under these circumstances, for a day's work which was not performed by the employee involved and for which it has properly compensated other employees. Further, the Carrier has paid the new employee on Position C-91 for the days while breaking in and is in the position of having paid three men, one at time and one-half, to protect two jobs. The only alternative would have been for the Carrier to have disqualified the employee who bid in Position C-91 until he was able to perform the duties on the position without assistance. This would have worked a hardship not only on the Carrier but on the Organization's members.

OPINION OF BOARD: Claimant, a Relief Clerk, was regularly assigned on January 15 and 16, 1950, to relieve Baggage Clerk position at Peoria, hours of service 6:00 A. M. to 3:00 P. M. On those two days Carrier required him to suspend work on his regular assignment and to break in a new employee who had been assigned to Baggage Clerk position at East Peoria, hours of service 3:15 P. M. to 12:15 A. M. There were no extra or unassigned employees available.

Claimant was paid the correct amount for the work performed at East Peoria. The claim is for time lost by reason of the suspension of work on the regular assignment at Peoria.

FIRST. Rule 17 (k) of the Agreement expressly contemplates that an employee may work two shifts within a 24-hour period and requires payment at the rate of time and one-half for working the second shift.

Claimant could have worked both shifts, his own at Peoria and the one at East Peoria; but if he had, Rule 17 (k) would have required the payment of overtime for the second shift worked. Whatever the motives of the Carrier may have been (see Awards 2593, 2823, 2859, 3301 and 3396) the direct effect of the suspension of work on his own assignment was to absorb overtime which would have been payable for the work which he performed at East Peoria. This was a violation of Rule 17 (a) Awards 2346, 2537, 2631, 2695, 2823, 2859, 4352, 5105, 5258, 5578 and 5640).

SECOND. The Carrier's main reliance is upon Rule 19 (Preservation of Rates) and upon the "Interpretation of Rule 14" which reads:

"In accordance with understanding reached in conference today, it is hereby agreed that regular assigned relief clerks working in an emergency on other than their relief assignments will be paid on the basis of the average of their regular relief assignment, or the rate of the position relieved, whichever is the higher, subject to paragraph (k) of Rule 17."

Rules such as Rule 19 are said to be no more than rating provisions (Awards 2823, 2859 and 4352). We are unable to ascribe any greater effect to the Interpretation above quoted. True, it does prescribe what the rate of pay shall be for regular assigned relief clerks "working in an emergency on other than their relief assignments"; but this is an interpretation of Rule 14, not Rule 19. It fixed the rate of pay for the work performed here at East Peoria, but does not purport to, and did not, relax the requirements of Rule 19 (a) with respect to payment for work lost at Peoria.

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 as above found.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.