

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

John W. Yeager, Referee

**PARTIES TO DISPUTE:**

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

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

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

- (a) The Carrier violated the Clerks' Agreement when it withheld any or all of the fifteen (15) employees mentioned below from his regular eight (8) hour assignment for any portion of the day, and required any or all of these employees to work on an entirely different position:

James F. Wall	—	Correction Clerk
James Bradley	—	Posting and Balancing Clerk
Luke W. Anchor	—	Collection Clerk
Thomas F. Donnellan	—	Correction Clerk
Joseph P. Walsh	—	Government Bill of Lading Clerk
Harry R. Kelsey	—	Cash Clerk
Edward P. Wicinski	—	O. S. & D. Clerk
Frieda V. Murray	—	Settlement Clerk
Arthur Krueger	—	General Clerk
Stephen Wass	—	Cash Clerk
Frederick A. Nelson	—	General Clerk
William F. Sullivan	—	Posting & Balancing Clerk
Louis Ginesi	—	Arrears Clerk
James V. Lunch	—	Posting & Balancing Clerk
Angelo S. Paterno	—	Outbound Storage Clerk

- (b) The above-mentioned employees, commencing with March 1, 1947, and thereafter, be paid additionally for the number of hours each was required to suspend work on their own position to work position of Bill Clerk or Comptometer Operator at the straight time rates of Bill Clerks or Comptometer Operators whose work they performed.

**EMPLOYEES' STATEMENT OF FACTS:** The fifteen (15) employees whose names appear in the Statement of Claim are in the service of The Baltimore and Ohio Railroad Company and are the occupants of regular assignments in the Freight Office at Pier 22, North River, New York, New York.

Beginning with March 1, 1947, and thereafter, it is the practice of Management on frequent occasions when the Billing Department is unable

strued as merely a rating rule. Were this not a fact the interpretation of Rule 20 as quoted hereinabove would be superfluous and completely without meaning. For a period of over 20 years the interpretation of Rule 15 of the current Clerks' Agreement has been consistently applied in accordance with the negotiated interpretation as it appeared in the June 1, 1927 Clerks' Agreement as is quoted hereinabove.

The employees would now come before this Division with the plea that the practice employed by this Carrier giving rise to this instant dispute in which they have concurred for such a long period of time must certainly involve a violation of Rule 4 of the current Clerks' Agreement. Such a contention is entirely untenable.

It is the position of the Carrier with respect to this particular phase of this dispute that Rule 15 of the current Clerks' Working Agreement is identical in principle to its immediate predecessor, Rule 20, of the Clerks' Agreement, dated June 1, 1927. The action of this Carrier falls squarely within the framework of Rule 15 of the current Clerks' Agreement. Rule 4 of the current Clerks' Agreement, relied upon by the employees as supporting their contention in this dispute contains, no provisions whatsoever relative to the temporary assignment of clerical employees nor to the applicable rate to be paid these employees as is the situation in this particular dispute. To place a restrictive meaning upon the concurred in interpretation of Rule 15 as is contained in the position of the employees in this dispute, would be contrary to the agreed upon practices on this Carrier for a period of many, many years.

It is universally conceded that every word in a contract must be considered in the light of its generally accepted meaning. To concur in the interpretation of the employees in their restrictive reading of Rule 15 is in fact a deletion of a portion of this rule, reducing it to a mere rating proposition.

In conclusion the Carrier positively asserts that the employees have presented no evidence on this property in this case supporting their contention that the Carrier violated Rule 4 of the Clerks' Working Agreement. Rule 4, by its very nature, was not designed to cover situations involving an emergency. That an emergency existed at this location during the time the petitioners were temporarily assigned to work in the billing department, is beyond dispute. A strike of Express Agency employees was the direct cause of this emergency situation, which situation was aggravated by the absenteeism among the piece work operators.

On this basis and on the basis of all that is contained herein the Carrier respectfully requests the Division to find this claim as being without merit and to deny it accordingly.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim is by the Organization on behalf of a number of clerks from a group of fifteen holding certain named and assigned positions. The names of the clerks on whose behalf claim is made and the positions held by them do not clearly appear. The facts are not in substantial dispute. The claim is a continuing one and the beginning is fixed by the Organization as March 1, 1947.

The group held their assigned positions in the Freight Office at Pier 22, North River, New York City. It appears that the assigned hours of the group were from 8:00 A. M. to 5:00 P. M. At the same location Bill Clerks and Comptometer Operators are assigned. These come under the same Agreement as the employees on whose behalf the claim is made. Beginning March 1, 1947 the Carrier for varying periods of time, during their assigned hours, suspended the work of the assigned positions of some of this group and required the occupants thereof to perform work in the Bill Clerk and

Comptometer Operator positions. There is evidence that the assigned hours of the Bill Clerk and Comptometer Operator positions were from 4:00 P.M. to 12:30 A.M. and that some of the members of the group worked the positions from 1:00 P.M. to 5:00 P.M., or the last four hours of the assigned hours of their own assignments.

The Organization says that this practice amounted to the suspension of work during regular hours of an assignment and requiring the occupant to work in another position for the purpose of absorbing overtime contrary to the rules.

One theory advanced by the Carrier is that the Freight Office group, including those on whose behalf the claim is made and the Bill Clerks and Comptometer Operators, function as a unit without the work limitations and restrictions contended for by the Organization and that since no work was performed outside of assigned hours there is no basis for a claim. In this connection it asserts substantially that there was a strike of Railway Express Agency employees which caused a temporary increase in LCL shipments and shipments of U. S. Mail Parcel Post by railroad which temporarily increased the volume of necessary work of Bill Clerks and Comptometer Operators thus making it temporarily necessary for employees of this group to assist with that increased work, and thereby no violation resulted.

Another theory advanced, if the presentation has been correctly interpreted, is that, assuming that the work required off the regular assignments represented temporary assignments, it was controlled by Rule 15. And being thereby controlled and the regular assignments commanding a higher rate than the temporary ones, the appropriate rate was under Rule 15 (a) that of the regularly assigned positions. This they received. And this being true there is no basis for a claim.

The record is not convincing, in the light of the pronouncement of this Division, that without limitation or restriction the Carrier had the right to have all of the work of all positions performed as a unit. The occupants of the assigned positions had the right to have their seniority and promotion rights protected.

The Carrier does, under Rule 15, have the right to temporarily assign employees to either a higher or lower rated position. If the temporary assignment is to a higher rated position the rate of that position applies. If it is to a lower rated position the rate of the regular assignment applies.

This, however, under the decisions of the Division, is not an unqualified right. Work suspended in a position for the purpose of absorbing overtime of another, whether it be higher or lower rated is not permissible. It is prohibited under Rule 4 as follows:

"Employees will not be required to suspend work during regular hours to absorb overtime."

If therefore the employees involved suspended work in their regular positions to absorb overtime of Bill Clerks and Comptometer Operators the claim is compensable, otherwise it is not. The determination depends upon the facts as disclosed by the record.

It appears that some of this work was customarily performed by piece work operators and some by assigned employees. The necessity for suspension and transfer, the Carrier asserts, depended upon absenteeism of piece work operators and the described unusual conditions which produced the increased amount of work. The work had to be kept current. It could not be kept current by the employees doing that work within their assigned hours. If performed by the employees performing that work regularly it would have required them to perform it in overtime hours. There is an absence of showing that they could not have performed it in overtime hours.

The conclusion therefore that these employes were required to suspend work during the regularly assigned hours of their assigned positions to absorb overtime of Bill Clerks and Comptometer Operators appears inevitable. The claim to the extent capable from the record must be sustained.

Since those on whose behalf the claim is made are not named and the time or times when each worked is not set out the names of those entitled to be compensated and the amount of compensation to which each is entitled will have to be ascertained by a check on the property.

**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 basis of the claim has been sustained.

#### AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 22nd day of July, 1952.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**INTERPRETATION NO. 1 TO AWARD NO. 5876**

**DOCKET NO. CL-5826**

**NAME OF ORGANIZATION:** Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

**NAME OF CARRIER:** The Baltimore and Ohio Railroad Company.

Upon application of the representatives of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The claim in this docket is on behalf of 15 named employes. The opinion in the last sentence of the next to the last paragraph recites: "The claim to the extent capable from the record must be sustained."

The meaning of this was that as to the claimants there was a sufficient showing that there had been a violation and that each and all of them were entitled to be compensated for the violations.

The docket did not sufficiently disclose the names of those who on particular days worked out of their regular positions or the period of time or times that they and each of them worked. This information could, it was assumed, be obtained by a check upon the property. Accordingly the opinion directed a check upon the property for the ascertainment of this information.

By the last paragraph of the opinion and the award the intention was to say that the named claimants were entitled to be compensated on the basis of the result of this check on the property; that is, each employe was entitled to and was awarded compensation for each instance when he was required to work out of his assigned position in the manner concerning which complaint was made.

It is patently obvious that there are imperfections in the last paragraph of the opinion as printed. Those on whose behalf the claims were made, as conclusively appears, were named. They were not named as to dates when they worked. The error is in the inadvertent appearance of "and" as the last word in the first line of the paragraph instead of "with."

The interpretation placed upon the award by the brotherhood is correct and the one intended.

Referee John W. Yeager, who sat with the Division as a member when Award No. 5876 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1953.