Award No. 6036
Docket No. CL-6064

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

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

(a) That the Carrier violated the terms of Clerks' Agreement when on February 2, 1950, it failed and refused to call Mr. E. B. Alderson to perform overtime work related to his regularly assigned position as Ticket Seller, and

(b) That Mr. E. B. Alderson shall now be paid one minimum day at the rate of time and one-half times the straight time daily rate of $12.43 in addition to all other earnings for February 2, 1950.

EMPLOYES' STATEMENT OF FACTS: Prior to the effective date of Clerks Agreement No. 7, January 1, 1945, the Agreements between the Carrier and its Clerical Employes did not contain a rule providing for the manner in which overtime work or extra time work on Sundays or holidays would be assigned or allocated.

The rule quoted next below was adopted during the negotiations of the parties conducted during the year of 1944 and became effective with Agreement No. 7, on January 1, 1945:

"RULE 33—WORKING OVERTIME

"Except where it is otherwise agreed between the proper officer and Division Chairman or Local Chairman authorized to act in his stead, in working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on holidays and Sundays. It is understood, however, that where a small amount of work is required on each of two or more positions and only one employe is required, the employe regularly assigned the majority of the work to be performed will be used."

understands that Rule 1 (e) is the yardstick to measure as to when extra jobs or positions are worked in a manner which constitutes them regular assignments.

That the clerical employes on this carrier had extra lists, extra employes with seniority, and extra employes who had not yet gained seniority, prior to September 1, 1949, is beyond question, because the agreement effective January 1, 1945, enumerates all three situations and provides coverage therefor.

Attention is called at this point to the fact that Rule 35 (b) does not read verbatim of Section 3 (i) of the March 19, 1949, agreement. This is explained by the fact that the employes requested and the carrier agreed to substitute the words "cut-off (furloughed)" for "extra and unassigned." The carrier understood that this was limiting in some measure the extra or unassigned employes who could be used under the rule, but it is plain that this action in no way impaired the basic rights of the carrier under the provisions of the March 19, 1949, agreement.

In conclusion, there are no rules of the current clerical agreement requiring the working of employes on an overtime basis as contended in this claim. Just the opposite is true, the rules upon which the carrier relies show that the parties understood and intended that extra positions or days would be worked as conditions required. The claim in this case seeks to enforce an unjustifiable economic situation upon the carrier as well as one not contemplated by the collective bargaining rules.

All of the data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The rules agreement does not restrict the Carrier's right to establish new positions to augment its regular force to provide extra or emergency service as required, even though such positions are of as little as one day's duration. In fact Rule 12 confirms that such action is proper by providing for the manner of filling "vacancies and new positions in Groups 1 and 2 of less than 30 calendar days duration."

Under the rules relating to overtime, it is obvious that such extra or emergency service may be performed by the regular force on an overtime basis. The Carrier thus has an option to augment the regular force or to assign overtime work for the performance of extra service when required. As noted if new positions are established they are to be filled in accordance with Rule 12, and if overtime is assigned Rule 35 establishes preferences for "employes regularly assigned to class of work for which overtime is necessary" or to "the regular employe," as the case may be.

Here the Carrier contends that it established a new position and filled it in accordance with Rule 12. However the person who performed the work did so on an overtime basis. Certainly the proper purpose of the establishment of new positions of short duration is to obtain the performance of work at straight time rates instead of at overtime rates, and it may not be reasonably contended that it is proper to establish a new position to provide overtime employment to an employe filling it under Rule 12 and thereby circumvent the preferences agreed upon in Rule 35. We think that where the service required is performed on an overtime basis that the preferences provided in Rule 35 must be observed. Hence the claim should be sustained.

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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1953.