

Award No. 6038

Docket No. CL-6066

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

(a) The Carrier violated the terms of the Clerical Agreement, as amended, by failing and refusing to use F. H. VanPelt in the performance of work on unassigned days, which work was of the same type and class to which he was regularly assigned, and

(b) That F. H. VanPelt be paid a minimum of 8 hours at the punitive rate of his position for September 25, 1949, account using an employee without seniority.

EMPLOYEES' STATEMENT OF FACTS: At Clifton Forge, Virginia, the Carrier maintains a hump yard operation serving as a receiving yard, classification yard, and coal billing point for the Eastern General Division. Coal and coke traffic moving eastward from the coal fields is assembled here in a receiving yard where the cars are then switched by the Hump method into a number of tracks known as the classifying or forwarding yard. A clerical force is maintained in the hump yard office to perform the work in connection with checking, routing, weighing, recording, rating, and way-billing this traffic after which it then moves out in trains to eastern connections. The operation is a seven-day service and the work is regularly performed seven days a week.

Mr. F. H. VanPelt is the incumbent of position No. A-29, Freight Bill Clerk, 7:00 A.M. to 3:00 P.M. in this operation. His regular assignment is Monday through Friday, rate \$12.13 per day. Saturday and Sunday are his regular rest days and the work on the rest days was regularly assigned to and made a part of Swing Relief Position No. A-182, established September 1, 1949, by Superintendent's Bulletin No. 182, for the specific purpose of providing relief to the incumbent of position No. A-29 on rest days Saturday and Sunday, to the incumbent of position No. A-37 on rest days Monday and Tuesday, and the incumbent of position No. A-43 on rest day Wednesday; however, a force reduction was made effective September 22, 1949, by the Division Superintendent's Bulletin No. 240, dated September 17, 1949,

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 themselves 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 force 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 principles enunciated in our Award No. 6036 are applicable to this claim.

Factually there is here involved work performed on one of claimant's rest days and a claim of preference thereto under Rule 35 (b). On Sunday, September 25, 1949, one of claimant's rest days and then an unassigned day, a cut-off clerk performed the work which claimant normally performed from 7 A. M. to 3 P. M. Monday through Friday. Since the coal mines were then reopening after a work stoppage, there was more work required than could be performed by one clerk, and the Carrier established an additional position and assigned an extra clerk to it under Rule 12.

It seems obvious that Rule 35 (b) relates to work which is regularly a part or all of the duties of a regular position on the unassigned rest days of that position. We think that when the cut-off clerk was assigned to such work on Sunday, September 25, 1949, that the requirements of Rule 35 (b) were fulfilled. When there remained additional service to be performed the Carrier elected to establish an additional new position to augment its regular force. That it had a right to do and under the circumstances of this case one cannot say reasonably that such action was taken to circumvent overtime preferences established by Rule 35. Hence the claim is without merit.

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 not violated.

AWARD

Claim denied.

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.