

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE WICHITA UNION TERMINAL RAILWAY COMPANY

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

(a) Carrier violated the Clerks' Agreement when on and after May 16, 1951, it assigned and required the occupant of Ticket Clerk Position No. 14, rate \$15.61 per day, to perform the duties of Chief Ticket Clerk Position No. 12, rate \$16.14 per day, for two and one-half hours each day and failed and refused to pay the higher rate of pay; and,

(b) Carrier violates the Clerks' Agreement when it requires the occupant of Position No. 14 to suspend work on his regular position for two and one-half hours per day to avoid the payment of overtime; and,

(c) Occupant of Ticket Clerk Position No. 14 shall now be paid two and one-half (2½) hours at the rate of \$16.14 per day for each day required to perform the duties of the higher rated position; and,

(d) Occupant of Ticket Clerk Position No. 14 shall now be paid two and one-half (2½) hours at the time and one-half rate of Position No. 14 for each day required to suspend work on his regular position to avoid overtime.

EMPLOYEES' STATEMENT OF FACTS: Mr. Geo. W. Gelbach is the regularly assigned occupant of Ticket Clerk Position No. 14, Ticket Office, Wichita Union Terminal Railway Company, Wichita, Kansas. The rate of pay of this position as of the date the instant claim arose was \$15.61 per day, subject to cost-of-living adjustments each quarter as provided by the so-called National Wage Agreement of March 1, 1951. The assignment of this position was changed, effective May 16, 1951, to 7:30 A.M. to 4:00 P.M., with a 30 minute lunch period, five days per week. The normal, ordinary and regular duties assigned to Ticket Clerk Position No. 14, occupied by Mr. Gelbach, as of the day prior to the date the instant claim arose consisted, in the main,

The Third Division has held that except insofar as it has restricted itself by the Collective Bargaining Agreement, or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion and that it is the function of good management to arrange the work, within the limitations of the Collective Bargaining Agreement, in the interests of efficiency and economy. There is no rule in the agreement which requires the Carrier to adjust rates whenever one clerk either regularly or temporarily is called upon to assist a higher rated clerk. The Board has also held that the Carrier has the right to transfer work from a higher rated to a lower rated position. See Award No. 5331. Incidentally, this Carrier has no such rule as Rule No. 44 in the Clerks' Agreement of the Chesapeake & Ohio Railway Company, as cited in Third Division Award 5331.

Rule No. 57 is the rule which provides that the wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. This rule could not possibly have any application whatsoever to the instant dispute. No new position is involved.

Rule No. 58 is the rule which provides that established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules. The instant dispute does not involve the discontinuance of any established position subject to the Clerks' Agreement or not so subject. No new position was created. No action has been taken to evade the application of the agreement rules. This rule simply has no application whatsoever to the instant dispute.

In conclusion, the Carrier reiterates that its action on May 16, 1951 in relieving the Chief Ticket Clerk of two hours' and thirty minutes' work each day and instructing the Ticket Clerk to devote that much more time each day to accounting work as a part of his regularly assigned duties does not, under any rule or combination of rules of the Clerks' Agreement, call for the triple payment and the double penalty which the Employees are here seeking to exact from the Carrier. The claim is entirely without merit and should be denied.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: This Docket involves the identical issues involved in Docket No. CL-6351, and both Dockets involve the same parties and the same Agreement. There the assigned occupant of Chief Ticket Clerk Position No. 12 was assigned two and one-half hours of higher-rated Ticket Agent position work per day. Here the record clearly establishes that the assigned occupant of Ticket Clerk Position No. 14 was assigned two and one-half hours of higher-rated Chief Ticket Clerk position work per day to give the assigned occupant of the Chief Ticket Clerk position time to perform the two and one-half hours of Ticket Agent position work. The instant case is accordingly controlled by Award 6318 which was adopted by this Division in connection with said Docket No. CL-6351.

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 Carrier violated the Agreement.

AWARD

Claim (a) sustained. Claim (b) denied. Claim (c) sustained, less what has been paid for the hours involved therein. Claim (d) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 10th day of September, 1953.