

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, that

1. The carrier violated Rules 1(c)1 and other rules of the Agreement at Glenwood, Pa., when effective September 28, 1949, it abolished Position No. 72-1-781, Second Trick Enginehouse Clerk at Glenwood, Pa., and assigned part of the clerical work attached thereto to General Foreman and Assistant Engine House Foreman, who are not covered by the Clerks' Agreement.
2. That Leo K. Heidenreich, extra clerk, be compensated at the rate of \$12.19 per day for each day Position No. 72-1-781 was abolished, beginning with September 28, 1949, and concluding with November 25, 1949.
3. That Robert W. Smith, former incumbent on Second Trick Engine House Clerk who was obliged to displace Third Engine House Clerk, be compensated for a differential in rate of pay based on time and one-half for all hours and/or days worked outside of his original assignment beginning with September 28, 1949, until his position was restored.
4. That Frank Wytiaz, former incumbent on Third Trick Engine House Clerk, who was obliged to displace Relief Engine House Clerk, be compensated for a differential in rate of pay based on time and one-half for all hours and/or days worked outside of his original assignment, beginning with September 28, 1949, until position was restored.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 25, 1949, the following positions existed at Glenwood Roundhouse:

1. Engine House Clerk, 1st trick No. 72-1-780 hours 7:59 A.M. to 3:59 P.M. rest days Sunday & Monday, rate \$12.19.

than the employe to whom the work was assigned in the event he was deprived of it. In the absence of Agreement to the contrary, the general rule is that the right to work is not the equivalent of work performed so far as the overtime rule is concerned. The overtime rule itself is consonant with this theory when it provides that 'time in excess of eight (8) hours exclusive of the meal period on any day will be considered overtime! The overtime rule clearly means that work performed in excess of eight hours will be considered overtime. Consequently, time not actually worked cannot be treated at the overtime rate unless the Agreement specifically so provides. This conclusion is supported by this Division Awards 2346, 2695, 2823, and 3049."

Based them on the Divisions Findings, it is evident that the wage claims as now presented by the claimants found herein for penalty compensation based on the overtime rate of pay must necessarily be held to be totally without merit.

Based on the facts and circumstances involved in this case and on the basis of all that is contained herein, the Carrier respectfully requests the Division to hold this protest, the wage claims emerging therefrom, as being totally without merit and to deny them accordingly.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision .

(Exhibits not reproduced.)

OPINION OF BOARD: As a result of a general strike in the coal and steel industries the Carrier abolished Position No. 72-1-781, Second Trick Enginehouse Clerk at Glenwood, Pennsylvania, effective September 28, 1949. The position was restored on November 25, 1949, and the claim herein covers the intervening period. The Employees make the following statement regarding the right of the Carrier to abolish the position:

"This Committee does not deny the existence of a coal and steel strike at the time this position was abolished. We do not deny that Carrier is within its rights to abolish positions when the work on such positions has substantially disappeared. We have previously admitted that as a direct result of the coal and steel strike the dispatchments were somewhat reduced during the tour of duty of the Second Trick Enginehouse Clerk position."

But the Employees object that although other clerical positions under the Clerks' Agreement remained in existence at this location, certain Foremen not covered by the Clerk's Agreement performed some of the work that would have been performed by the incumbent of the abolished position had it not been abolished. The Employees conclude that for this reason the position was improperly abolished.

The Record clearly establishes that the only part of the work of the abolished position that was performed by any Foreman, was 45 minutes per night performed by the Night General Foreman. The Record further establishes that the particular type of work so performed, involving use of the telephone in the General Foreman's office, does not belong exclusively to employees under the Clerks' Agreement, but is incidental to the Foreman's position and was performed by the Foreman prior to the abolishment of the

Clerk position. The Employees have failed to prove that any Foreman performed any work belonging exclusively to employees under the Clerks' Agreement. This recognized, the claim must be denied. See Award 3494.

FINDINGS:

The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 did not violate the agreement.

AWARD

Claims (1), (2), (3) and (4) all 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.