

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when on January 22, 23, 24 and 29, 1951, it required employees occupying positions in Group 1 (Clerks) to suspend work on their regular assignments and perform a total of 147 hours of ticket assorting regularly assigned to and required of employees assigned to positions of Ticket Assorter (Group 2) for the purpose of or having the effect of absorbing overtime, and that

(b) Ticket Assorters C. H. Carter, J. L. Padgett, K. D. Dobbins, W. Moye, D. E. Carroll and K. V. Johnson shall be compensated at proper rate of time and one-half for a proportionate part of the time so worked by Clerks as aforesaid.

EMPLOYEES' STATEMENT OF FACTS: The claimants, C. H. Carter, J. L. Padgett, K. D. Dobbins, W. Moye, D. E. Carroll and K. V. Johnson are regularly assigned Ticket Assorters in Office of Superintendent Car Service, Atlanta, Georgia. Their names are shown on Ticket Assorter (Group 2) seniority roster for that seniority district.

At the time this claim arose, there were twenty regularly established Ticket Assorter positions in the seniority district, ten of whom were assigned to a work week of Monday through Friday and ten of whom were assigned to work Tuesday through Saturday. Claimants were assigned Monday through Friday. Each group had assigned hours of 8:15 A. M. to 4:45 P. M. On January 22, 23, 24 and 29, 1951, there were no vacancies in the Ticket Assorter positions. Clerks Evelyn Abercrombie, Doris Lord, Marvin Lord, Grady Johnson, Mildred Williams, H. G. Jeffers, Jr., T. J. Jones, C. V. Verlander, Ruby Broom and Joe Brown, each of whom was assigned 8:15 A. M. to 4:45 P. M., Monday through Friday, to positions of Record Clerk Group 1, were required or permitted to suspend their regularly assigned duties, their positions not being filled.

Claimants made claim on the basis they should have been allowed to perform the work on an overtime basis in lieu of the Clerks being required or permitted to perform the work at straight time rates for their own positions.

(e) The Board being empowered only to decide this dispute in accordance with the collective bargaining agreement between the parties to it has no authority to grant the new rule here sought by the Brotherhood, nor does it have authority to award the penalty here claimed.

Claim should for all the reasons given be denied and Carrier respectfully requests that the Board so hold.

All relevant facts and arguments involved in this dispute have heretofore been made known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim here grows out of the fact that on January 22, 23, 24 and 29, 1951, the Carrier required employes occupying Group 1 (Clerk) positions to perform substantial amounts of ticket assorting work regularly assigned to and normally performed in the greater part by occupants of Group 2 (Ticket Assorter) positions, which was done, the Employes say, "for the purpose of or having the effect of absorbing overtime" in violation of Rule 15 of the applicable agreement.

The Carrier defends in part by noting that the Group 1 employes involved herein had all been promoted from Group 2 and, as a consequence, held seniority in both Group 1 and Group 2. In answer to this, however, the Employes point out that under Paragraph 2 of Rule 4 (b) employes who have been promoted from Group 2 to Group 1 and are displaced (the Group 1 employes had not been displaced here) from Group 1 may return to Group 2, but only "provided there is no permanent position in the higher group * * * on which their seniority rights and qualifications entitle them to place themselves."

The Carrier also asserts that Group 2 employes have no monopoly on ticket assorting work. In this connection it should be noted that Rule 1 classifies employes by groups, and Rule 2 defines each group. Rule 2 (a) defines Clerks as employes who regularly devote not less than four hours per day "to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work * * *." Rule 2 (b) defines Waybill and Ticket Assorters as "Employes engaged in assorting waybills, tickets, etc." Rule 2 (a) does not specifically mention ticket assorting and the language thereof hardly seems broad enough to encompass such work, unless, and only to the extent that, a limited amount of ticket assorting may reasonably need to be performed by Clerks directly in connection with the duties clearly assigned to their positions. The Record does establish that through the years Group 1 employes have more or less voluntarily performed small amounts (but not substantial amounts) of ticket assorting work primarily to expedite their own work. Without determining whether performance of small amounts of ticket assorting work by Clerks is reasonably necessary and so proper, it suffices to say that, in regard to the basic issue involved in the present case, the temporary performance by the Group 1 employes of substantial amounts of ticket assorting work having the effect of absorbing overtime was not proper.

The amount of ticket assorting work performed by the Clerks in the present case varied from six to eight hours per employe daily. The Clerks in effect took over Ticket Assorter positions on the days in question. The Record factually indicates that ticket assorting work must be performed currently, that due to a recently adopted staggered work week program for Ticket Assorters (but not for Group 1 employes) only one-half of the full Group 2 crew was available on two of the days in question, and that but for the performance by the Group 1 employes of substantial amounts of ticket assorting work on the days in question overtime would have been required of available Group 2 employes.

In view of the above considerations Claim (a) must be sustained. Claim (b) should be sustained at pro rata rate only.

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 violated the agreement.

AWARD

Claim (a) sustained. Claim (b) sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of October, 1953.