

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

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

**POTOMAC YARD (of the) RICHMOND, FREDERICKSBURG
AND POTOMAC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement, dated September 1, 1951.

(1) When on March 22, 1952, the Carrier called extra Clerk C. E. Perkinson, to report for duty at 8:30 P.M., and required him to work until 4:30 A.M., March 23, 1952, a part of two shifts.

(2) That the Carrier (Potomac Yard of the Richmond, Fredericksburg and Potomac Railroad Company) now be required to compensate extra Clerk C. E. Perkinson, 4 hours and 30 minutes at the rate of time and one half, at the rate of the Number Clerk's Position, for the time he worked on March 23, 1952.

EMPLOYEES' STATEMENT OF FACTS: There exists at Potomac Yard, a three shift operation, the shifts are 12 midnight to 8:00 A.M., (known as the first shift) 8:00 A.M., to 4:00 P.M., (known as the second shift) and 4:00 P.M., to 12 midnight (known as the third shift). There also exists at this point an extra board, covered by Rule 6 of the agreement signed September 1, 1951.

On March 22, 1952, extra Clerk C. E. Perkinson was called to report for work on an additional number clerks position at 8:30 P.M., and was required to work until 4:30 A.M., March 23, 1952, a part of the third and first shifts.

At Potomac Yard the clerical employees make an individual time card covering the hours of service on each day. On March 23, 1952 extra Clerk Perkinson filed his time card, claiming 8 hours pay for working 8:30 P.M., to 12 Midnight at the rate of time and one-half time account of working his second tour of duty in a 24 hour period, and in addition 4 hours and 30 minutes at the rate of time and one-half account of working on a second tour of duty; he was notified by the Superintendent's Office that he would only be allowed an 8 hour day at the rate of time and one-half. Extra Clerk Perkinson then filed an additional time card, claiming 4 hours and 30 minutes at the rate of time and one-half for work he performed on March 23, 1952. In accord with Rule 6, section (e). This claim was declined by the Superintendent on March 29, 1952. See Employees Exhibit (a).

the Management free to call an individual extra employe for one eight-hour period at a time most consistent with the requirements of the service.

CONCLUSION: The claim here is primarily based on an alleged violation of the starting rule, Rule 10 (c) of the Agreement. If that rule was violated, then the employe is entitled to compensation under Rule 6 (e). These appear to be the points to be decided.

The Management contends that the starting rule comprehends only situations involving the working of three consecutive shifts. The term "three consecutive shifts" embraces only shifts that follow in succession. The one eight-hour shift worked by Clerk Perkinson did not form any part of three consecutive shifts; it was entirely independent of and did not successively follow any other. It further contends that no rule of the current Agreement restricts its right to call extra employes under emergency conditions or to call them for hours of service which best meet the needs of the service, provided the service performed by such employes does not form a cycle of "three consecutive shifts," and in calling such extra clerk no other provisions of the Agreement are violated. Also, as previously stated, what is being claimed in this case completely disregards a practice which has been followed for many years.

The Management points out the serious affect such a restriction would place upon its ability to operate, and enters its hopes that the Board will find it consistent to rule that the Clerks' Agreement has not here been violated as claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner here claims, in addition to 12 hours' pay already received, an additional 4½ hours' pay at time and one-half, for service from 8:30 P. M. of one day until 4:30 A. M. the following day. Claimant is an extra clerk who had already completed one tour of duty that first day, before being called out at 8:30 P. M.

Petitioner depends upon Rules 6, 7 and 10 (c). Carrier relies upon Article 2 of Supplemental Agreement and also on Rule 10 (c). Rule 6 relates to extra employes and provides in addition to establishment of extra pools, first-in first-out, called and not used, and rules for completion of unfinished shift, that time and one-half shall be paid "for all time worked in excess of 8 hours (or one tour of duty) in any 24 hour period. A 24 hour period ends at the completion of a tour of duty paid for at the penalty rate." We are of the opinion that this rule has been followed in the pay granted this Claimant.

Rule 7 relates only to a day's work and has no particular application to the present facts. Article 2 of the Supplemental Agreement implies permission to call extra clerks "to fill a vacancy at other than regular established starting periods."

We then arrive at the limitations of Rule 10, Starting of Assignments. Paragraph (a) establishes a fixed starting time for regular assignments. Paragraph (b) provides for bulletining of jobs as new positions when starting time or other changes occur. Paragraph (c) definitely fixes limits on starting time of shifts when three consecutive shifts are worked and in the second paragraph expressly prohibits starting "any assignment between twelve (12) Midnight and 6:00 A. M."

We are of the opinion that the Claimant's starting time of 8:30 P. M. did not violate Paragraph (c). On the contrary he was called "at other than regular established starting periods" as anticipated by Article 2 of the Supplemental Agreement.

The rules not having been violated, the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 rules have not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.