

Award No. 6523

Docket No. CL-6582

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

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

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY
HENRY K. NORTON, TRUSTEE**

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

(a) Carrier violated the terms of the current Clerks' Agreement in effect between the parties when it failed and/or refused to call regularly assigned Clerk Robert W. Lennon to perform billing work necessary on Saturday, June 7, 1952 and instead called in an employe occupying position of Asst. Cashier to perform unassigned work of Seatrain Rate Clerk, neither of whose positions have billing as part of their regular assignment and never perform this work, and ordered this employe to do all billing necessary, and

(b) The Carrier shall now reimburse Clerk Robert W. Lennon for four (4) hours pay at the prevailing Biller's rate at time and one-half for billing work performed on June 7, 1952 by Asst. Cashier while covering position of Seatrain Rate Clerk.

EMPLOYEES' STATEMENT OF FACTS: At Edgewater, N. J. the Carrier maintains a Freight Station employing seventeen (17) full time regularly assigned clerical positions with regular assigned hours all working Monday through Friday. Saturday and Sundays being rest days.

The positions involved in this claim are the Asst. Cashier, Seatrain Rate Clerk, General Clerk and Billing Clerks.

The Asst. Cashier works Monday through Friday, 8:30 A.M. to 5:30 P.M., handles all checks submitted by the industries in payment of freight charges and other miscellaneous charges, makes corrections on freight bills, and balances out the Agent's daily remittance to the Treasurer. The Seatrain Rate Clerk works Monday through Friday, 8:30 A.M. to 5:30 P.M.,

The Carrier therefore had on duty at punitive rates personnel who regularly perform the duties required on the claim date and the Carrier holds that this is in harmony with the intent of the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: At the Carrier's Freight Station in Edgewater, N. J., there are 17 full time regularly assigned clerical positions, all working Monday through Friday with Saturday and Sunday off. There are no extra or unassigned employees. On Saturdays one assigned employee, a rate clerk, covers the station performing all clerical unassigned work that may be necessary, including some billing. On Friday, June 6, 1952, the Carrier was advised that there would be 50 Seatrain Ladings delivered the next day and the Seatrain Rate Clerk was ordered to report for work Saturday, in addition to the rate clerk that ordinarily covers the Saturday work.

The General Chairman protested this action, and requested that "the senior regularly assigned Biller be given a call to perform the 'billing' necessary." He justified his request on the ground that "there was more time involved than just one (1) minimum Call." This request was refused and the Seatrain Rate Clerk was called. But during the night of Friday, June 6, there was sickness in the family of this clerk, and he could not report for work. The Carrier then called the Assistant Cashier, who was the senior available employee, to work in place of the Seatrain Rate Clerk.

Saturday was a day not part of any assignment. The Employees argue, therefore, that the Rule governing Work on Unassigned Days required "the regular employee" to be called, in the absence of extra or unassigned employees. The Carrier does not question the applicability of this Rule (20½(e)). It denies, however, that Claimant was the regular employee within the meaning of the Rule. The issue is, therefore, whether the Carrier violated the Agreement by not calling the senior billing clerk, in addition to the Seatrain Rate Clerk, and whether Claimant is entitled to 4 hours' pay at time and one-half, for that part of the work that required billing.

The Employees rely not only on paragraph (e) of Rule 20½, but also on paragraphs (f) and (h). These rules are plainly not applicable to the instant case. Paragraph (f) deals with working overtime "before or after assigned hours", and (h) merely states that overtime work is not permitted unless directed by proper authority. The issue must be determined on the basis of paragraph (e), and as to this the claim is that because the extra Seatrain work includes both rating and billing, therefore, two regular employees must be called, a billing clerk as well as a rate clerk, in addition to the rate clerk that regularly covers the work on Saturdays.

The Carrier's position is that the work in question was mixed, and was not the same as the regular assignment of either the rate clerk or the billing clerk. It points out further that the rate clerk who covers the station on ordinary Saturdays also performs some billing work; and it contends that only one additional employee was needed on June 7, just as only one is used on ordinary Saturdays. Under such conditions, where the unassigned work includes parts of two different assignments, the Carrier argues that neither of the two occupants could be considered "the regular employee" referred to in the rule. Therefore, it contends that the senior available assigned employee was properly used to the extra Seatrain work.

It is to be noted that the Claimant did not object to the Seatrain Rate Clerk being called for the work. He wanted a senior bill clerk to be called in addition to do what billing work might be necessary. Again when the Seatrain Clerk reported off on account of sickness and the Assistant Cashier was called, the claim here is not for any work this employee performed other than billing. All the Claimant asks is that he be compensated for that part of the work the Assistant Cashier did which was billing, and for this part, which took 4 hours, he claims compensation as "the regular man". Actually

there were two other bill clerks senior to the Claimant but they did not want to work the Saturday in question, hence Claimant was the senior billing clerk available.

In one of the awards cited by the Employees to support their position (No. 5972), this Division interpreted the same rule governing work on unassigned days as here and stated: "The Carrier has attempted to construe 'the regular employe' as meaning a regular employee." It held this to be an unjustified construction of the rule. In the instant case, the Employees are trying to justify the billing clerk's claim on just such an improper construction. The Claimant states that his regularly assigned duties "were to assist the other billers daily on eastbound, westbound and Seatrain bills." This hardly makes him "the regular employee" within the meaning of Rule 20½(e). Actually he happened to be a senior employee who was available for billing work.

If the Carrier were contending that any clerk senior to the billers is entitled to unassigned billing work on Saturdays, it would be guilty of the improper construction of the rule. But it is not doing so in this case. Its position is that the extra Seatrain work included both rating and billing. On most Saturdays one rate clerk does both rating and billing, and it contends that no more than one additional employee was needed to do both the rating and billing on June 7, although it expected that the rate clerk who works every second and third Saturday, and who was on duty on June 7, would also help with the billing work. Therefore, it holds that the work being mixed, and the Claimant not being "the regular employee" who does the same work on his assignment, he was not entitled to be called.

Admittedly the billing was only a part of the extra work required. The question is whether the Claimant was correct in insisting that two employees should be called, one to do the billing only, the other to do the rest of the work. The evidence shows that one rate clerk normally handles all the work on Saturdays, including whatever billing is necessary. The Employees do not charge that this has been done in violation of the Agreement. By assenting to the practice, they interpret Rule 20½(e) to authorize it. Under these circumstances, we cannot agree that the rule required the Carrier to separate the billing work from the rest of the work on the Saturday here involved, and call an additional employee to do the billing.

True, there was apparently more billing work to be done than is usually necessary on Saturdays. But this alone does not justify a claim that the Carrier violated the rule, when on most Saturdays it is permissible to use one employee to do all the work including necessary billing. It is only by splitting the billing work off from the combined work, as is not ordinarily done on Saturdays, that any bill clerk could claim this work. To say that any one of them, under these circumstances, is "the regular employee" within the meaning of Rule 20½(e) is to misconstrue the Rule as we think may not be done, and the Division so held in Award 5972.

We find, therefore, that the Carrier did not violate Rule 20½(e), and the claim is not valid.

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 rule 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 24th day of March, 1954.

*