

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated the rules of the Clerks' Agreement in the Auditor Freight Traffic Department, Jersey City, N. J., when it required Clerk M. Hanlon, regularly assigned to position "R-6", to perform the duties of position "R-8" on May 1st and 4th, 1953 and position "R-10" on May 6th, 1953, and

(b) Clerk Hanlon be compensated an additional day's pay at the rate of \$11.42 per day on each of the days she was removed from her regular assignment to perform the duties of positions "R-8" and "R-10".

EMPLOYEES' STATEMENT OF FACTS: Position "R-8" was unfilled on May 1, 1953 and May 4, 1953, and position "R-10" was unfilled on May 6, 1953.

Clerk Hanlon was assigned to perform the duties on positions "R-8" and "R-10" on the dates specified in claim.

Clerk Hanlon's position of "R-6" does not include the duties that were assigned to her on days in question.

All positions mentioned are in the same office and have the same hours of service:

Position R-10—rate \$11.42 per day is an assignment as Office Boy.

Position R-8—rate \$11.42 per day is an assignment as Record Sorter.

Position R-6—rate \$13.43 per day is an assignment as Record Clerk.

POSITION OF EMPLOYEES: Carrier violated the rules of the Clerks' Agreement effective December 15, 1952, copies of which are on file in your honorable Board and by reference hereto is made a part hereof. The par-

either extra or furloughed who could have been used to fill this vacancy, but on the first two of these dates, May 1 and 4, claimant was used to sort way-bills which by bulletin was described as one of her primary duties. See Exhibit "A" attached.

The fact that employes may be temporarily assigned to positions other than that to which they have been assigned by bulletin is recognized in Rule 28—Preservation of Rates—which on this property reads as follows:

"Employes temporarily assigned to higher rated positions or work shall receive the rates applicable to such positions or work. Employes temporarily assigned to lower rated positions or work shall not have their rates reduced.

This rule will not apply where absent Employee is paid on account of sick leave, nor for occasionally assisting a higher rated Employee due to a temporary increase in the volume of work."

What is complained of here has been a matter of practice for many years and is still the method of operation. If work is necessary to be performed and no furloughed or extra employee is available to perform it, someone under the scope of the applicable agreement is required to perform it. What they are paid for this service is established by Rule 28. To pay the employee as is claimed here, two days' pay for one day's work is not supported by the agreement and being a penalty claim it must be clearly supported by a rule. Not only the facts but the rules are against that claim. On two of the dates cited the work complained of is even included among the primary duties assigned to claimant by bulletin.

For the reasons stated above, this claim should be denied in its entirety.

The Carrier affirmatively states all data contained herein has been presented to the employee's representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the facts here presented as applied to the rules of the Agreement we are of the opinion that the work performed by Claimant on the days in question was not in violation of rules cited in support of this claim.

The work, we consider, was of a nature which she could be assigned to do if necessary under the duties of her position. Also, the record shows that she was paid the higher rate of her regular position.

On the question of the rule governing absorbing of overtime we do not think that a sufficient showing has been made to entitle the Claimant to a sustaining award. No definite proof on this proposition is presented. See Awards 7167, 7185, 7312 and other awards of this Division on the application of like rules.

We think this claim lacks merit and should 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1956.