

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-1 (e), by using a junior employe to perform extra service at Clinton Street Station, Baltimore Maryland, Maryland Division, on October 31, 1953.

(b) R. W. Thompson, Clerk, be compensated five and one half hours as a penalty, at the punitive rate, because L. Hindes, a junior clerk, was used to perform extra service on October 31, 1953. (Docket E-896)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant, R. W. Thompson, was the incumbent of regular Clerical Position, Symbol No. F-162, Clinton Street Station, Baltimore, Maryland, Maryland Division, on October 31, 1953, tour of duty 8:00 A. M. to 5:00 P. M., one hour meal period, rest days Saturday and Sunday.

On October 31, 1953, Clerk L. J. Hindes was the incumbent of regular Clerical Position, Symbol No. F-863, Clinton Street Station, Baltimore, Maryland, tour of duty 8:00 A. M. to 5:00 P. M., one hour meal period, rest days Sunday and Monday.

It is respectfully submitted, therefore, that the claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced).

OPINION OF BOARD: The claim is that R. W. Thompson should be compensated five and one-half hours as a penalty, at the punitive rate, because Hindes, a junior clerk, was used to perform extra service on October 31, 1953.

At the time both Thompson and Hindes were the incumbents of clerical positions at the Clinton Street Station in Baltimore, but Thompson's days of rest were Saturday and Sunday and Hindes' days of rest were Sunday and Monday. Therefore, Hindes, and not Thompson, was on regular duty on Saturday, October 31st.

Hindes' duties under his assignment expressly included the requirement to "take track check."

The Superintendent of the division, on October 28, 1953 issued a bulletin reading as follows:

"A check of all freight cars on the tracks of the Pennsylvania Railroad on the Maryland Division and connecting industries is to be made as of 11:59 P. M., Saturday, October 31, 1953.

"This will necessitate the use of a large number of clerks on an overtime basis to perform this work to augment the regular force so that this work may be performed as planned. Therefore, any male clerks desiring to be used on an overtime basis to perform this work will please arrange to notify the head of their department not later than noon, Friday, October 30, 1953, in order that proper assignments may be made."

Thompson volunteered to work on the proposed special check. However, it was found that the work at this point could be done by the regular incumbent Hindes, on an overtime basis; therefore Thompson was not called.

The Claimant's contention is that Rule 2-A-1 (e) was violated. It provides as follows:

"Positions or vacancies of thirty days or less duration may be filled without bulletining. The senior qualified available employee requesting such position or vacancy or requesting a bulletined position or vacancy, pending assignment of a successful applicant, will be assigned, except where agreement under Rule 5-C-1 requires the use of extra employee, provided this will not entail additional expense to the Company."

No rule or award has been cited or found holding that an isolated special part-time piece of work such as this constitutes a "position or vacancy." But regardless of the inapplicability of Rule 2-A-1 (e) the Carrier issued a bulletin observing seniority in the proposed use of additional employees.

In Award 5346 this Division said:

"Despite Carrier's contention to the contrary, it is well settled by awards of this Board that even though there are no specific rules in the Agreement covering the situation, seniority is the essence of the Collective Agreement and that it applies in determining preference to overtime work of a given class (see Awards 4200, 4531 and

others). It is also a well-established principle that overtime work arising out of a particular position belongs to the occupant of that position. The two principles are not in conflict. The first is merely qualified to that extent by the second."

And in Award 4894 this Division's opinion said:

"At the outset it must be conceded that in the absence of Agreements, understandings or established practices to the contrary or in the event of emergencies it is true, as a general rule, that the incumbent of a regularly assigned position is entitled to the overtime work from that position."

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 Employes involved in this dispute are respectively Carrier and Employes 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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1957.