

Award No. 9774

Docket No. CL-8732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when it abolished General Clerk Position No. 701 at Appleton, Wisconsin, and assigned some of the remaining duties of that position to employees outside the scope of the Clerks' Rules Agreement.

2. Carrier further violated the Clerks' Agreement and Memorandum of Agreement No. 9 when it used Chief Clerk R. W. Schramm on an overtime basis on Saturday to perform work regularly assigned to and performed by Employee Nabbefeld, Monday through Friday.

3. Carrier shall compensate Employee P. J. Nabbefeld for two (2) hours at the overtime rate for each Saturday commencing April 10, 1954 on which the Agent and/or Chief Clerk performed work assigned to Position No. 169 and regularly performed by Employee Nabbefeld on the work days of his position Monday through Friday.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 5, 1954 the following was the assigned clerical force in the freight office at Appleton, Wisconsin.

Title	Pos. No.	Occupant	Days of Work
Chief Clerk	183	R. W. Schramm	Monday through Friday
General Clerk	701	P. J. Nabbefeld	Monday through Friday
Car Clerk	169	L. H. Diestler	Tuesday through Saturday

On April 5, 1954 General Clerk Position 701 was abolished and the remaining duties of that position were assigned to clerical Positions 183 and 169 and the abstracting formerly performed on Position 701 was assigned to the operator, an employee outside the Agreement. This work has since been restored to the Clerks' Agreement.

work, clearly supports the use of the chief clerk on the basis that the preponderance of the work which he performs on Saturday represents duties which he is regularly assigned to perform Monday through Friday.

The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to April 5, 1954 the clerical force at the Carrier's freight office at Appleton, Wisconsin, had the following three positions:

Chief Clerk	Position No. 183	Monday through Friday
General Clerk	Position No. 701	Monday through Friday
Car Clerk	Position No. 169	Tuesday through Saturday

On April 5, 1954 the position of General Clerk was abolished and its remaining duties were assigned to the Chief Clerk and the Car Clerk, except that some of the work of abstracting, which had been performed by the clerks, was assigned to the Operator, an employee not covered by the parties' Agreement. At the same time, the employee who had been assigned to the position of General Clerk, exercised his seniority to bid in on the position of Car Clerk and the work of that position was changed to Monday through Friday.

The parties were able to reach agreement on the property with regard to that part of the claim which dealt with the abstracting work by the Operator. The Carrier made payment to the Chief Clerk and the Car Clerk according to the agreement and this work has been returned to the Clerks.

However, a limited amount of clerical work was still required to be performed on Saturdays. And the Chief Clerk continued to receive calls on Saturdays to do such work. The claim now remaining is for two hours' compensation for each Saturday since April 10, 1954 for work performed by the Chief Clerk. Claimant contends that the work which is performed on Saturdays constitutes work on an unassigned day of his position and that since there were no extra or unassigned employees available, he was entitled to receive the call in accordance with Rule 28.

"Rule 28—Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The question to be determined is one of fact. Was Claimant P. J. Nabbeheld "the regular employee" and entitled to the work in dispute, or was the work not exclusively assigned to him and was thereby indistinguishable from that performed by the Chief Clerk, who was the senior employee?

It is admitted that Chief Clerk Schramm continued to receive a call on Saturday for the performance of the work then assigned to and associated with his position as Chief Clerk. When the unassigned day Rule (No. 28) is read in conjunction with Rule 32 (f) and (g) we find that the Chief Clerk,

being the senior and higher rated of the two employes may rightfully lay claim to this Saturday work if a preponderance of it normally belongs to him.

"(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35 (b), (if such holiday falls within the employe's work week) the employe regularly assigned to position on which overtime is required will be utilized. It is understood that the word "regularly" as contained in this Rule 32 (f) means that the employe who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work."

(g) When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, employes will be assigned such overtime in accordance with seniority, fitness and ability, first from the sub-division of the department wherein the work occurs and, secondly, from the entire department."

A breakdown of the duties actually performed by Chief Clerk Schramm on successive Saturdays in February and March 1956 as given in our record clearly indicates that the preponderance of duties performed by this employe on these days is work normally performed by the Chief Clerk. This leaves the remaining claim in this case with little to support it.

Our conclusion is that 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 Employe involved in this dispute are respectively Carrier and Employe 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty

Dated at Chicago, Illinois, this 16th day of December, 1960.