

Award No. 10178

Docket No. CL-9937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, 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 and Memorandum No. 9 when it failed to assign overtime work to the senior qualified employee.

2. Carrier shall compensate Employee K. H. Freeman, occupant of Position No. 36, Chief Yard Clerk, Cedar Rapids, Iowa Yard Office, at the penalty rate of his position as follows:

October 1, 1956	4 hrs. 15 minutes
October 5, 1956	2 hrs. 15 minutes
October 19, 1956	4 hrs. 15 minutes

EMPLOYEES' STATEMENT OF FACTS: At Cedar Rapids, Iowa Yard Office, Seniority District No. 33, the Carrier maintains a clerical force of two yard clerks and one chief yard clerk assigned as follows:

Pos. No.	Title	Hours of Assignment	Occupant	Seniority Date	
				Clerical	Non Clerical
36	Chief Yard Clerk	8 am to 4 pm	K. H. Freeman	1-15-42	11-14-41
43	Yard Clerk	4 pm to 11:59 pm	A. P. Atkinson	9-12-49	9-12-49
38	Yard Clerk	11:59 pm to 7:59 am	K. E. Silker	1-16-46	7- 9-45

Employee E. L. McMickle, who has a clerical and non-clerical seniority date of February 5, 1948, was assigned as relief clerk.

Over a period of time an accumulation of work consisting of recording information from scale tickets and the posting of the trainmen's bulletins occurred which the Carrier deemed necessary to be performed on overtime at the overtime rate of pay.

Clerk Position No. 43 and as Carrier's Exhibit "F" a copy of Clerk's Bulletin No. 31 dated January 25, 1957 which advertises Yard Clerk Position No. 38.

POSITION OF CARRIER: We have here a situation where, continuous with their regular assignments, employees performed overtime in connection with work which is assigned to and performed by them during their regularly assigned hours. In each instance, as has been shown, Employee McMickle and Employee Atkinson filled and performed the duties of their regular assignments on the dates involved and then worked overtime, continuous with their regular assignments, performing the same duties which they perform during their regularly assigned hours.

Inasmuch as the overtime work performed in each instance was work directly connected with the respective yard clerk assignment by reason of the fact that that work is assigned to and performed by yard clerks, the use of yard clerks to perform said work, as was done on the dates involved herein, was proper.

Attention is directed to Section 4 of Memorandum No. 9 (Carrier's Exhibit "C"). In each case the overtime work could be identified with a specific position and the employee regularly assigned to that position was used for the overtime work.

Certainly the claimant could not possibly have any claim to overtime work on the chief yard clerk position on Monday, October 1, 1956, which was one of the claimant's regularly assigned rest days. The NOTE following Section 4 of Memorandum 9 referred to above provides that "in applying the provisions of this section, 'the employee regularly assigned to that position' means the employee assigned to fill that position on that particular day will be called". Employee McMickle was the employee assigned to fill that position on that particular day.

By reason of the overtime work being work which is regularly performed by yard clerks and as it could be properly identified with Yard Clerk Position 43, it was entirely proper that the occupant of that position be used to perform the overtime work continuous with his regular assignment on October 4, and October 18, 1956.

There is no merit in this claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Chief Yard Clerk K. H. Freeman, contends that the Carrier failed to call him on October 1st, 5th and 19th, 1956, to perform overtime work recording scale tickets and posting Trainmen's Bulletins.

At the Cedar Rapids, Iowa Yard Office the Carrier maintains the following staff:

Pos. No.	Title	Hours of Assignment	Occupant	Clerical Seniority Date
36	Chief Yard Clerk	8 a.m. to 4 p.m.	K. H. Freeman	1-15-42
43	Yard Clerk	4 p.m. to 11:59 p.m.	A. P. Atkinson	9-12-49
38	Yard Clerk	11:59 p.m. to 7:59 a.m.	J. J. Timble	—
—	Yard Clerk	Relief Clerk	E. L. McMickle	2- 5-48

On October 1, 1956, McMickle worked from 4:00 P. M. to 8:15 P. M. booking scale tickets; on October 4th—Atkinson worked from 11:59 P. M. to 2:15 A. M. (October 5th) booking scale tickets; and on October 18th—Atkinson worked from 11:59 P. M. to 4:15 A. M. (October 19th) booking scale tickets (2¾ hours) and posting Trainmen's Bulletins (1½ hours).

Rule 32(f) provides that:

"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 employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word "regular" as contained in this Rule 32(f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work."

The controlling language of the above provision that governs this case is as follows:

"... the employee who occupies a position ... at the time overtime work occurs will be used for the overtime work."

In this case, the overtime work grew out of the position and in each instance the employees (McMickle and Atkinson) first completed their regular assignments and then—continuous with their regular assignments—worked overtime.

The record supports the fact that the work involved was common to both the position of Chief Yard and Yard Clerk.

Memorandum No. 9 does not change the results we have reached.

Accordingly, the Board rules that the Carrier did not violate the Agreement and denies the claim.

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

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1961.