

Award No. 10632
Docket No. CL-9504

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

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

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

1. The Carrier violated the Clerks' Rules Agreement when it removed a regularly assigned employe from his position to avoid calling a furloughed employe or the regular employe to perform work on a day which is not a part of any assignment.

2. The Carrier shall now be required to compensate Employe N. L. Miller, Milwaukee, Wisconsin, for three (3) hours at the pro rata rate of Yard Clerk Position No. 576 for each of the following Saturdays: December 31, 1955, January 7, 21, February 18, 25, and March 3, 1956.

3. The Carrier shall compensate Employe N. L. Miller for four (4) hours at the overtime rate of Yard Clerk Position No. 576 for each of the following Saturdays: January 28 and February 4, 1956.

EMPLOYEES' STATEMENT OF FACTS: Employe N. L. Miller is regularly assigned to Yard Clerk Position No. 576, Lower Canal District, Milwaukee, Wisconsin. Position No. 576 is a five-day position as contemplated by Rule 27(b) and is assigned to work from 8:00 A.M. to 5:00 P.M. Monday through Friday with Saturday and Sunday as rest days. The rate of pay of Position No. 576 is \$15.328 per day.

The principal duties of Position No. 576 consist of the following work: taking track list, receipt shipping directions, card cars, maintain demurrage and seal records.

Employe R. L. Lindeman is regularly assigned to Relief Position No. 1 Saturday through Wednesday with rest days of Thursday and Friday. On Saturday he is assigned to Position No. 575, Yard Clerk and Auto Messenger

assigned work days. It can readily be seen, therefore, that he performed no work which is a part of any other position as is contended but rather he performed only such work as is assigned to him and which he performs regularly, and on a day which is part of his assignment.

We respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to Yard Clerk Position No. 576, Lower Canal District, Milwaukee, Wisconsin, with work days Monday through Friday 8:00 A. M. to 5:00 P. M. and principal duties as follows: to take track list, receipt shipping directions, card cars, maintain demurrage and seal records. Employee Lindeman was regularly assigned to Relief Position No. 1, with work days Saturday through Wednesday and assigned on Saturday 8:00 A. M. to 5:00 P. M. to Position No. 575, Yard Clerk and Auto Messenger at Fowler Street Station; on Sunday and Monday 1:00 P. M. to 9:00 P. M. to Position No. 563, Yard Clerk P. M. Dock; and on Tuesday and Wednesday 11:59 P. M. to 8:29 A. M. to Position No. 564, Yard Clerk P. M. Dock. As bulletined for a vacancy in 1955, the principal duties of Relief Position No. 1 were "Handling interchange reports and all records pertaining to cars to and from the P. M. Car Ferry, regular yard clerk and auto messenger duties. Must be a competent automobile operator." As initially bulletined in 1950, its principal duties were "Regular yard clerk duties and handling interchange reports. Must be a competent automobile operator." Both Yard Clerk Position No. 576 and Relief Position No. 1 were in the same Seniority District No. 22, Milwaukee Terminal; and yard clerks and messengers were on the same roster.

On Saturdays December 31, 1955, January 7, 21 and 28, February 4, 18 and 25, and March 3, 1956, Lindeman receipted certain shipping tickets and carded certain cars in the Lower Canal District, work he performed regularly. Petitioner maintained that Carrier thereby removed him from his position, on a day assertedly not part of any assignment (Position No. 576 is not relieved on rest days), to avoid calling an extra or unassigned employee or Claimant, in violation of Rules 28 and 32(f) of the Agreement between the parties effective September 1, 1949. Also, Petitioner maintained that since yard clerk positions were Group 1 and messenger positions Group 2, under the Scope Rule 1(a) they were not of the same class and it was a violation of Rule 27(e) to establish Position No. 575 as a one-day per week position with the dual classification.

Rule 27(e), 28 and 32(f) were as follows:

Rule 27 — 40 Hour Week:

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"(e) — Regular Relief Assignments

"All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

"Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

Rule 28 — Work on Unassigned Days:

"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."

Rule 32 — Overtime

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"(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 employee's work week) the employee 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 employee who occupies a position either temporarily or permanently at the time overtime occurs will be used for the overtime work."

Carrier maintained Lindeman was not removed from his position to do another's work on the Saturdays in question but, on the contrary, regularly performed work a part of his own assignment pursuant to Rule 27(e) as "relief work on certain days and such types of other work on other days as may be assigned under this agreement."

The Board considers the claim to be without merit. Relief Position No. 1 was in existence since September 1, 1949, and the bulletins referred to in the record in effect characterized it essentially as a Group 1 position. Furthermore, yard clerks and messengers were on the same roster within the same Seniority District No. 22. In these circumstances, there was no violation of Rule 28 in permitting Lindeman to perform yard clerk functions, on Claimant's rest day, which were encompassed within the former's own assignment. "The fact that the claimant was assigned to perform this work during the week does not restrict it to the individual . . ." yard clerk. See Award 5912, also see Awards 6946 and 8136 as to procuring performance of necessary work on the days involved by the expedient of staggering work weeks. Furthermore, it was no violation of Rule 27(e) to have the incumbent of Relief Position No. 1 perform on certain days relief work (for Positions Nos. 563 and 564) and on another day other assigned work of the same class—also yard clerk work—in the same seniority district. Finally, there was no violation of Rule 32(f) since overtime was not involved. The Board therefore concludes that the claim 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 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 31st day of May 1962.