Award No. 10721

Docket No. CL-10518

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated Rules 18(d) and (c) of the Clerks' Agreement when they arbitrarily permitted Division Storekeeper K. W. Morgan and Storekeeper W. Grudzina to perform assigned duties belonging to Section Stockman W. Koons and laborer J. McCabe, as listed herewith:

K. W. Morgan—	Feb. 4, 1958—	6½ hrs.
	Feb. 5, 1958—	6½ "
	Feb. 6, 1958—	6½ "
	Feb. 7, 1958—	6½ "
	Feb. 10, 1958—	6½ hrs.
	Feb. 11, 1958—	6 "
	Feb. 12, 1958—	5 "
	Feb. 13, 1958—	6½ "
	Feb. 14, 1958—	6 "
	Feb. 25, 1958—	4½ "
	Feb. 26, 1958—	4½ "
W. Grudzina—	Feb. 4, 1958—	4 hrs.
	Feb. 5, 1958—	4 "
	Feb. 6, 1958—	4 "
	Feb. 7, 1958—	4 "
	Feb. 10, 1958—	1½ "

TOTAL .....82½ hrs.

(b) Section Stockman E. Koons rate $2.28 per hour and Laborer J. McCabe rate $2.032 per hour, each be compensated for 41½ hours each at punitive rate.

involved worked during their regular hours, they had substantially the same work; they received the contractually proper rate of pay; and, all of this is recognized in the majority's opinion.

"The referee places some significance on the record of fact that the Carrier wanted to get the work in question done 'as soon as possible'. He says 'This is clear evidence that overtime would have been required to get this work done promptly.' This is not at all true. It has no such evidentiary significance. As a matter of practical operation and good judgment, it is completely incorrect and most unrealistic to assume, as the Opinion does here, that overtime must be worked in order to get a job accomplished 'as soon as possible'. We sincerely regret that what should be the serious considerations of this Board can be laid upon the fallibilities of such impractical presumtions."

In the instant case before your Honorable Board we have a similar situation wherein (1) claimants involved worked during their regular hours, (2) they had the same work in the same class, craft and seniority district, (3) they received the contractually proper rate of pay, and (4) they were by no stretch of the imagination required to suspend work to absorb overtime.

As to the Storekeepers "lending a hand"; the Carrier wishes to call your Honorable Board's attention to the Opinion of Board in Award 5820 where it is stated, in part, "This record does not substantiate the charge that Claimant House was required either to 'suspend work', or to 'suspend work on his regularly assigned position'. At most the record indicates that House was asked to assist Klos from time to time. But the record does not show that he suspended work on his own position when such assistance was given. * * * In the instant case before us the assistance of House was more in the nature of 'lending a hand', than suspending work as contemplated by Rule 21 of the Agreement".

In summation, therefore, Carrier submits that it did not violate the provisions of Rule 18, as claimed by the Employes, as there was no overtime required and there was no necessity for working any overtime. Neither claimant was adversely affected. They were each paid for their regular assignment, and none of the work performed was other than incidental to their regular duties.

For the the reasons stated herein, Carrier requests that your Honorable Board deny this claim in its entirety as being wholly without merit.

All data contained herein has been presented to the Employes.

OPINION OF BOARD: This dispute is between The Grand Lodge, Brotherhood of Railway and Steamship Clerks and The Central Railroad Company of New Jersey.

About February 1, 1958, all of the material at the old Jersey City Repair Track and material from Elizabethport Store were required to be moved to the new location.

Division Storekeeper Morgan and Storekeeper Grudzina performed 82½ hours of work over a period of about 3 weeks. The work consisted of unloading trucks, putting bins together and filling bins.

The Petitioner contends that the action of the Carrier permitting or requiring Morgan and Grudzina to suspend work on their own assignments and do work that would have been overtime for Claimants, violated the Agreement.

Carrier has four contentions as follows:

"1. THE 'ABSORBING OVERTIME' RULE IS NOT APPLICABLE WHERE THE WORK IS ASSIGNED TO CLAIMANTS AND WOULD NOT HAVE BEEN PERFORMED ON AN OVERTIME BASIS.

"2. CLAIMANTS WORKED THE ASSIGNED HOURS OF THEIR POSITIONS, PERFORMING WORK WITHIN THEIR CRAFT OR CLASS AND WERE PAID AT THE APPLICABLE RATE OF THEIR ASSIGNMENT AND SUFFERED NO COMPENSABLE LOSS THEREFROM.

"3. CARRIER EXERCISED ITS MANAGERIAL PREROGATIVES IN ARRANGING ITS WORK TO MEET SERVICE REQUIREMENTS.

"4. THE STOREKEEPERS WERE ONLY PERFORMING THEIR DUTIES AND RESPONSIBILITIES WHEN THEY SUPERVISED THE TRANSFER OF THE STORES FACILITIES AND, WHEN NECESSARY, 'LENDING A HAND', WITHOUT DETRIMENT TO CLAIMANTS."

Division Storekeeper Morgan and Communipaw Storekeeper Grudzina are under the Scope and only excepted from Rules 3 (a) and 6.

Morgan had headquarters almost 9 miles away. Grudzina's duties are predominantly supervisory but include the Jersey City Store.

There is little doubt but that Division Storekeeper Morgan's duties were suspended. He worked 65 hours almost 9 miles from his headquarters. However, we are of the opinion that Storekeeper Grudzina was only lending a hand. His duties were not suspended. Furthermore his duties were only partially supervisory.

Claimants were deprived of 65 hours of work. They are entitled to 32½ hours each at pro rata rate. We are not inclined to give overtime for time not worked.

For the foregoing reasons we believe the Agreement was violated.

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 had jurisdiction over the dispute involved herein; and

For the foregoing reasons we believe the Agreement was violated.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1962