

Award No. 12457
Docket No. CL-11367

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Carrier violated the terms of the currently effective Agreement between the parties when on April 21, 1958 it abolished the Yard Clerk Position No. 21 located at the Ewing Avenue Yard Office and on April 24, 1958 abolished the General Clerk Position located at the Chouteau Avenue Yard Office and on April 21 bulletined a new position of General Clerk at Chouteau Avenue Yard Office with approximately the same hours as the abolished General Clerk Position at that point and verbally instructed the occupant of the new General Clerk Position No. 58 at Chouteau Avenue to go to the Ewing Avenue Yard Office each day from approximately 5:00 P.M. to 9:00 P.M. to perform the duties previously attached to the abolished Yard Clerk Position No. 21.

(2) John Shannan, occupant of Yard Clerk Position No. 18 at Ewing Avenue, and/or his successor, now be allowed four hours' overtime on each date of his assignment from April 28, 1958 until corrected.

(3) James Ellison, occupant of Relief Clerk Position No. 109, and/or his successor, who relieved Position No. 18 on the Saturday and Sunday rest days thereof, now be allowed four hours' overtime for each date he occupied the position, April 28, 1958 until corrected

(4) Thomas O'Toole, and/or his successor, as the occupant of General Clerk Position No. 58, now be allowed four hours' overtime at the rate of his position for each date, April 28, 1958 until corrected, account being suspended from his regular duties to perform the work at Ewing Avenue.

(5) M. Dochnal, who relieved the occupant of Position No. 58 on the rest days thereof, and/or his successor, now be allowed four hours at overtime rate for each date, April 28, 1958 until corrected,

when he was required to report to Ewing Avenue to perform work at that point.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 21, 1958, the force at Ewing Avenue included:

Yard Clerk No. 18, 7:00 A. M. to 3:00 P. M., 7 days per week,
Yard Clerk No. 19, 3:00 P. M. to 11:00 P. M., 7 days per week,
Yard Clerk No. 44, 11:00 P. M. to 7:00 A. M., 7 days per week,
Yard Clerk No. 21, 1:30 P. M. to 9:30 P. M., 7 days per week.

Prior to April 24, 1958, the force at Chouteau Avenue consisted of:

Car Service Clerk No. 13, 7:00 A. M. to 3:00 P. M.,
General Clerk No. 55, 2:30 P. M. to 10:30 P. M., 7 days per week.

All clerical employees at both Ewing Avenue and Chouteau were relieved on rest days by regularly assigned Relief Clerks, James Ellison relieving on Position No. 18 at Ewing Avenue and M. Dochnal relieving on Position No. 55 at Chouteau Avenue.

Effective at the close of work April 20, 1958, Position No. 21 at Ewing Avenue was abolished. Effective at the close of work April 24, 1958, General Clerk Position No. 55 at Chouteau Avenue was abolished. See Employees' Exhibits 1(a) and 1(b). Effective April 21, 1958, the hours of Yard Clerk Position No. 18 were changed to 9:00 A. M. to 6:00 P. M. with one hour for lunch, as shown in Employees' Exhibit 1(c). On April 22, 1958, the hours on Position No. 13 at Chouteau Avenue were changed to 7:00 A. M. to 4:00 P. M., with one hour for lunch, as shown in Employees' Exhibit 1(d). Also effective April 22, 1958, the hours of Yard Clerk Position No. 44 at Ewing Avenue were changed to 11:00 P. M. to 8:00 A. M. with one hour for lunch, as shown in Employees' Exhibit 1(e), and 1(f). Effective April 29 hours of Yard Clerk Position No. 18 at Ewing Ave. were changed to 9:00 A. M. to 5:00 P. M. with no assigned meal period, as shown in Employees' Exhibit 1(g). On April 21, 1958, the Carrier established a new position of General Clerk at Chouteau Avenue with approximately the same duties as previously attached to abolished Position No. 55 at Chouteau Avenue, the location showing, "Chouteau Avenue and elsewhere as needed in St. Louis Terminal", and with assigned hours of 2:00 P. M. to 10:00 P. M., which was assigned to Thomas O'Toole, (See Employees' Exhibits 1(a), 1(i), and 1(j)), and the incumbent thereof instructed to go to Ewing Ave. at 5:00 P. M. each day and remain until approximately 9:00 P. M. each day to assist the yard clerical force at that point, which work had previously been assigned to the abolished Position No. 21 at Ewing Avenue. Effective April 30, 1958, the assigned hours of Position No. 58 were changed to 2:00 P. M. to 11:00 P. M. with one hour for lunch, as indicated in Employees' Exhibit 1(k). Subsequently, on November 24, 1958, General Clerk Position No. 58 was abolished, as shown in Employees' Exhibit 1(l), and a new position of General Clerk No. 66 at Chouteau Avenue established with location shown as "Chouteau Avenue and elsewhere as needed in St. Louis Terminal", as shown in Employees' Exhibit 1(m), and with approximately the same duties as previously attached to General Clerk Position No. 58, except for the checking of industries from Knox Avenue to Chouteau Avenue, which was assigned to a newly established Yard Clerk-Messenger Position No. 59, which was later abolished and a new position of Messenger established with exactly the same duties as the former Yard Clerk-Messenger Position No. 59, which is the subject of an addition claim. The occupants of Position No. 58 and Position No. 66 have continued to perform the work at Ewing Avenue for four hours on each date.

Also, returning for a moment to Award 5640 on this property, it was there stated:

"Thus, whether any overtime was absorbed at Ewing Avenue depends upon whether there was such an available extra or unassigned employe. If there was, no overtime was absorbed at Ewing Avenue; but if there was not, the regular employe, whose day off it was, was entitled to the work at time and one half (see Award 2341)."

Rule 47 in the controlling agreement reads:

"Employees shall not be required to suspend work during regular hours to absorb overtime."

There was not overtime worked either at Chouteau Avenue or Ewing Avenue Yard and none of the claimants was required to suspend work during regular hours. The claimants worked the regular hours of their assignments and were duly compensated therefor. Had there been any occasion to supplement the regular working force with additional personnel, there were extra or unassigned employes available and the Organization does not contend otherwise. It cannot be shown by evidence beyond the realm of speculation and conjecture that the claimants were required to suspend work during regular hours to absorb overtime and any claim predicated upon that rule is unmeritorious.

The agreement rules as they apply to the particular factual situation involved do not warrant a sustaining award and this Division is requested to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: In the seniority district of the St. Louis Terminal there are three Yard Offices, the Ewing Yard Office near 23rd Street, Chouteau Yard Office near Mile Post 3.0, and Lindenwood Yard Office at Mile Post 7.1. On April 21, 1958 the Carrier bulletined a position of General Clerk No. 58 at Chouteau as located at "Chouteau and elsewhere as needed in St. Louis Terminals." The successful bidder was instructed to report for work each day at 2:00 P. M. at the Chouteau avenue Yard, but each day to go to the Ewing Avenue Yard from 5:00 P. M. to 9:00 P. M. each day to perform duties of an abolished position, returning to the Chouteau Avenue Yard to tie up at 10:00 P. M.

The claims are by the occupant of Position No. 18 at Ewing, and his relief for four hours overtime for the time the new position worked at Ewing, and by the occupant of the new Position No. 58 and his relief for four hours overtime for each day when he was performing work at Ewing.

There are numerous issues advanced to support the claims. The claim that the bulletin failed to provide a specific location for work was contained in Terminal Chairman Ellison's letter dated April 7, 1958 attached to Carrier's submission as Exhibit B was not pursued further after being denied by the Superintendent of Terminals. Thus the contention of an improper bulletin was settled on the property. It is to be noted that the Carrier's Birmingham Terminal (See Exhibit E Carrier's Submission) bulletins are used using similar language to that here used.

Award 5640 sustains a claim on the same property when a clerk, assigned to Lindenwood was used at Ewing Avenue. Likewise Award 26, SBA 194, sustained a claim when an employe was used elsewhere than where specifically assigned. Here the facts are clear that the bulletin provided for work at Chouteau and elsewhere as needed in St. Louis Terminal. From the first day the assignment was the same, and the four hours were put in at Ewing. Thus the Claimants did not suspend work on their assignment. They began work and ended work at the same location, Chouteau, all part of the original assignment pursuant to the bulletin which had not been appealed.

A further claim is presented that the practice absorbed overtime at Ewing. The record does not disclose the availability of an extra or unassigned employe to perform the work. While the preceeding would presume that the work was part of the regular assignment as bulletined, the existence of overtime would depend on a showing that there was no extra or unassigned employe available. This the record does not do and the claims must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.