

Award No. 14302
Docket No. CL-14547

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5444) that:

(a) Carrier violated the Clerks' Agreement at Matteson, Illinois when it assigned clerical work coming within the scope of the Clerks' Agreement to an employe not subject to that Agreement on October 30, 31 and November 1, 1961.

(b) Mr. Floyd Windal shall now be compensated a day's pay at the penalty rate of \$29.09 per day for October 30, 31 and November 1, 1961.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 23, 1960, the force at Matteson, Illinois consisted of:

Position	Employee	Hours	Rest Days
Agent	P. Hametman	6:00 A.M. to 2:00 P.M.	Sunday
Clerk	F. Windal	6:00 A.M. to 2:00 P.M.	Saturday & Sunday
Clerk	N. Scharnhorst	5:30 P.M. to 1:30 A.M.	Saturday & Sunday

The ticket office was closed on Sundays and the agent was not relieved on his rest day.

The clerks were both relieved on their rest days.

The entire office was closed from 1:30 A. M. to 6:00 A. M. each day.

The position of Agent was included in the scope of the Telegraphers' Agreement while the two clerk positions were subject to the Clerks' Agreement.

C) that inasmuch as the increase in this instance was in telegraphers' (suburban ticket selling) work, the services of a telegrapher, not a clerk, where required on the claim dates, and Operator Pegus was properly used to assist the station agent on these dates.

OPINION OF BOARD: The force at Matteson, Illinois, prior to December 23, 1960, consisted of one Agent and one Clerk on the 6 A. M. — 2 P. M. shift and one Clerk on the 5:30 P. M. — 1:30 A. M. shift. The office was closed between 1:30 A. M. and 6:00 A. M. The agent position was covered by the Telegraphers' Agreement, the two clerk positions by the Clerks' Agreement.

In years past agents sold tickets and handled the accounting work but, when such work increased substantially, clerk positions were established to sell tickets. In the years prior to 1960, however, the agent was able to perform the ticket work without assistance. (For many years there has been no telegraph or train order work at Matteson.)

Throughout the years, and until December 1960, all work pertaining to freight traffic was performed by clerks. This included checking of trains and cars to and from the EJ&E and MC; compiling train sheets, photographing and stripping waybills; compiling interchange reports; handling reconsigning orders and reconsigning cars; compiling reports for demurrage charges and records; handling and relaying switching orders of nearby industries; providing information; and similar duties.

On December 23, 1960, due to a decrease in both passenger and freight business (as well as operational changes), Carrier abolished the 6:00 A. M. — 2:00 P. M. Clerk position. Incumbent Clerk F. Windal thereupon displaced Clerk H. Scharnhorst on the 5:30 P. M. — 1:30 A. M. shift. The work of the abolished Clerk position was assigned to Agent P. Hametman and was performed by him subsequent to December 23, 1960.

About ten months later additional help was needed on the 6:00 A. M. — 2 P. M. shift, due to a change in commuter passenger rates and heavy end-of-the month ticket sales. Carrier called Extra Telegrapher Pegus to work in the Matteson office on October 30 and 31, and November 1, 1961. While there is some conflict on the point (and the fact is not necessarily controlling), the record shows that Extra Telegrapher Pegus performed freight clerical work during his assignment, while Agent Hametman concentrated on ticket selling. (It may also be noted that Matteson facilities permit only one person to dispense tickets to the public at any one time.) The record does not reveal the total amount of work accomplished or, indeed, whether Hametman and Pegus were both fully occupied for the entire shift on each of the three days.

Petitioner claims that Carrier should have appointed a clerk for the three days in question and, consequently, its use of Extra Operator Pegus constituted an Agreement violation.

Carrier affirms that the basic question to be determined is whether an increase in ticket sales can grant to the Clerks the right to an overtime assignment. It suggests that when the work-load of an agent becomes too great, Carrier must assign (to help him) a telegrapher, who has an exclusive right to ticket work, rather than a clerk, who has no exclusive right to either ticket or freight work.

Carrier's contentions are not persuasive. The record shows that freight clerical work was performed exclusively by clerks until December 1960. This work was performed by the Agent, thereafter, solely because there was insufficient work (both agents' and clerks') to occupy more than one man. (Petitioner, in fact, did not complain about that assignment.) But in October-November 1961, that situation no longer prevailed. Circumstances were the same as they had been before December 23, 1960; namely, there was enough work for two men, part of such work consisting of clerical freight work. Clearly, it would have been improper for Carrier to have substituted a Telegrapher for a Clerk during the pre-December 1960 period to accomplish the freight clerical work. By the same token, it was improper on the days in question. Agent Hametman's performance of freight clerical work during the period when only one man was required at Matteson cannot provide a basis for finding that, when two men are required, all freight clerical work should be performed by a Telegrapher or Agent. See Award 5560, Award 29 (Illinois Central Special Board of Adjustment No. 170), and Award No. 5 (Atchison, Topeka and Santa Fe Special Board of Adjustment No. 174), among others.

In light of the above analysis, Petitioner's contractual claim is sustained. What, then, of its claim for compensation? The record shows that no qualified extra clerks were available on the three days in question. Claimant Windal worked the 5:30 P. M. — 1:30 A. M. shift at Matteson. He was the senior employe on the applicable roster in the district and there are no other Claimants. Windal could have been used and, if so, would have received the overtime rate. It is not inappropriate, therefore, to grant his claim for three day's pay at the overtime rate since that is what he would have received were it not for Carrier's improper assignment of another employe.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.

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