

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

John H. Dorsey, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES  
THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5957) that:

1. Carrier violated the terms of the current Clerks' Agreement on September 13, 1964 when it permitted R. Paffenroth, Trainman, who holds no seniority under the current Clerks' Agreement to perform Yard Clerk duties at Warwick, N.Y. and also violated the provisions of Article V, Section 1(a) of the August 21, 1954 National Agreement by failing to pay claim or render decision covering the above violation within 60 days from date of filing thereof, and that:

2. Mr. James Bellarosa, Yard Clerk, shall now be compensated twelve (12) hours at the punitive rate of Yard Clerk \$467.50 per month as claimed for September 13, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** James Bellarosa owned Yard Clerk position at Warwick, N.Y. Monday through Friday with Saturday and Sunday as days of rest. Carrier had vacancies of both Yard Clerk and Trainman on Sunday, September 13, 1964. Trainman R. Paffenroth, who holds no seniority under the current Clerks' Agreement, was permitted by the Carrier to work both as Yard Clerk and as Train man on that date and compensated him for both.

Yard Clerk Bellarosa submitted request to Chief Dispatcher J. E. Flood for twelve (12) hours pay at punitive rate for not being called to work as Yard Clerk on his day of rest Sunday September 13, 1964 and Carrier permitting Trainman R. Paffenroth to perform Yard Clerk duties.

Chief Dispatcher Flood denied Yard Clerk Bellarosa's request as follows:

"Warwick, N. Y.  
September 24, 1964

J. Bellarosa, Yard Clerk:

Your daily time report for September 13, 1964 asking for 12 hours pay has been denied. R. Paffenroth worked as Yard Clerk that date and was compensated for this day.

/s/ J. E. Flood  
Chief Dispatcher

Copy: PSC"

After R. Paffenroth commenced work as yard clerk, it developed that the yard drill crew was short one brakeman. No train service employees were available and as R. Paffenroth had previous train service experience, he volunteered to work both positions.

The Carrier compensated extra operator R. Paffenroth for twelve hours as a yard clerk and twelve hours as a brakeman.

Claimant J. Bellarosa submitted a claim for twelve hours under Rule 25(b) of the current agreement which reads as follows:

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time or Sundays and Holidays."

The Chief Dispatcher who receives the Yard Clerk's time reports denied the claim on September 24, 1964.

On October 15, 1964, the Local Chairman appealed the Chief Dispatcher's decision to the Superintendent. This appeal was turned over to the Assistant to the President for handling and after conference with the Local Chairman on October 29, 1964, he offered a payment of four hours to the claimant for not having been called.

The Local Chairman rejected this offer on November 11, 1964, and on December 28, 1964, requested advice as to when the claimant would be paid 12 hours at time and one half for September 13, 1964.

January 8, 1965, the Assistant to the President replied that he was of the opinion that the claimant was entitled to a payment of four hours for not having been called on September 13, 1964.

The Local Chairman on January 8, 1965, contended a violation of Article V, Section 1(a) of the August 21, 1954 National Agreement by virtue of the Carrier not having rendered a decision within sixty days. January 11, 1965, the Carrier stated that it could not agree with the organizations' position.

The Local Chairman advised on January 15, 1965, that if payment was not made, the claim would be placed before the National Railroad Adjustment Board.

February 23, 1966, the organization served written notice on the Executive Secretary, Third Division, National Railroad Adjustment Board of its intention to file ex parte submission of the dispute.

**OPINION OF BOARD:** Clerks move that the Claim be allowed as presented because Carrier's highest officer on appeal failed to deny the Claim in writing within the time limitation prescribed in Article V of the August 21, 1954 National Agreement. Carrier answers that it submitted a proposed compromise settlement of the Claim and this it construes as tolling the time limitation. The Carrier's defense is without merit. We will grant the motion.

**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 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 failed to comply with Article V of the August 21, 1954 National Agreement.

#### AWARD

Claim sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1967.