

Award No. 16022
Docket No. CL-16448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 (GL-6074)

(a) Carrier violated 1(g), 3(a), 4(c), 7(b) and related rules of the Clerks' Agreement at Metropolitan Freight Station on December 14, 15, 16 and 17, 1965 when they used a junior Employee to perform the work items of a vacant Rate Clerk's position on an overtime basis, and

(b) Carrier shall be required to compensate Mr. L. Kelly four and one-half hours' additional pay, at the punitive rate, for December 14, 15, 16 and 17, 1965.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective December 15, 1952 between the parties to this dispute which sets out rules pertinent to this claim. All agreements are on file with this Board and portions of these agreements may be referred to without quoting in full.

Mr. M. Guralchuk, regularly assigned as Rate Clerk, was upgraded to position of Chief Rate Clerk on December 13, 14, 15, 16 and 17, 1965 and the work items on the position of Rate Clerk temporarily vacated by Mr. Guralchuk, on the dates specified in Statement of Claim, were performed on an overtime basis by Mr. J. Stawinski who is junior in seniority to the claimant.

Claimant L. Kelly was available but was not requested to indicate his desires for this work.

No dispute exists between the Carrier and the Organization concerning the seniority status of the Employees involved in this claim — which is as follows:

	Group 1	Group 2
L. J. Kelly	2-06-42	11-10-39
J. Stawinski	10-23-42	7-06-42

Claimant L. Kelly protested the Carrier's action that he was not advised that vacancy existed on the position of Rate Clerk commencing on December 14, 1965 to determine his desires to request assignment thereto, resulting in the institution of claim for being deprived of earning 4½ hours at punitive rate on the dates involved in this claim.

In letter dated January 12, 1966, Superintendent G. C. Wilms denied claimant Kelly's claim (Exhibit A).

The Superintendent's denial was appealed to the Vice President and General Manager who under date of March 24, 1966 also denied the claim (Exhibit B).

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On dates in question vacancy existed on position of Chief Rate Clerk, tour of duty 1:00 P. M. to 9:00 P. M., due to incumbent's absence on vacation, and 2nd trick Rate Clerk M. Guralchuk, with same tour of duty, was upgraded to fill that position, both located at Metropolitan Freight Station, with which handling it is understood there is no dispute.

However, the dispute centers on the filling of Mr. Guralchuk's position by a junior employe on an overtime basis from 4:30 P. M. to 9:00 P. M. J. Stawinski, regularly assigned as Biller, also at Metropolitan Freight Station, tour of duty 8:00 A. M. to 4:30 P. M., having made request to cover Guralchuk's vacancy, was assigned thereto, which he worked after covering his own assignment on each of the claimed dates.

Claimant, who is regularly assigned as Chief Rate Clerk, with tour of duty 8:00 A. M. to 4:30 P. M., at the same location and in the same area as Guralchuk, contends that as he is senior to Stawinski, he should have been assigned to the claimed vacancy on an overtime basis.

OPINION OF BOARD: On the dates in question, a 2nd trick Rate Clerk was upgraded, vacating his position temporarily, to fill a Chief Rate Clerk position temporarily vacant due to the vacation of the incumbent. The tour of duty of the vacated 2nd trick Rate Clerk position was 1:00 P. M. to 9:00 P. M. Stawinski, a Biller and Claimant, a Chief Rate Clerk, and senior to Stawinski, both had tours of duty from 8:00 A. M. to 4:30 P. M. Stawinski made request to cover the 2nd trick Rate Clerk position and was assigned to perform its duties on overtime after covering his own regular assignment during its regular hours. No qualified regular extra or furloughed employe was available for the 2nd trick Rate Clerk vacancy. Claimant made no request to fill the vacancy.

The argument of the parties, in the abstract, was whether in filling temporary vacancies under Rule 7(b) Carrier was obligated to make known to the senior employe that a vacancy existed; however, the record shows that the concrete issue debated on the property was whether Carrier was obligated to inform the claimant of the situation to determine whether he wanted to fill the involved vacancy on an overtime basis. In his letter replying to the claim as originally filed, Carrier's Superintendent acknowledged that the claim was "account junior employe being used on a temporary vacancy on an overtime basis" and denied the claim on the basis that claimant did not make himself

available by requesting the work and the junior employe did. Similarly Carrier's Vice President and General Manager's letter acknowledged that the claim was about the assignment to work a "temporary vacancy . . . on overtime basis"; and denied it on the basis that "Mr. Stawinski had . . . made request for this overtime work while claimant Kelly did not."

Thus the issue to be resolved is whether, when the work of a temporarily vacated position is to be performed on an overtime basis, Carrier is obligated to offer it to the most senior of two possible claimants for it, before assigning it to the less senior.

The argument about the meaning in Rule 7 of the phrase "at their request" was an argument about Carrier's defense to the claim of improper assignment of overtime, but did not displace the claim of improper assignment of overtime as the issue at bottom involved; as Carrier says in its Ex Parte Submission:

" . . . the dispute centers on the filling of Mr. Guralchuk's position by a junior employe on an overtime basis from 4:30 P. M. to 9:00 P. M."

The Board has consistently held that seniority must be observed in determining work assignments of overtime. We do not believe that Carrier has shown that Rule 7 was intended to require that employes must have requested overtime before they are eligible to be considered for assignment to it.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.