

Award No. 16569
Docket No. CL-16959

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6232) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly, Rules 4-A-7, 9-A-1, 9-A-2, among others, Memorandum of Understanding No. 47, when it failed and refused to assign Clerk Shea to work his regular assigned position on his rest day, Saturday, October 8, 1966, and instead assigned his work to two (2) other clerical employees.

2. The Carrier shall pay Clerk Shea, regular incumbent of the position, for eight hours at the rate of time and one half for Saturday, October 8, 1966, having refused and failed to assign him to work his regular assigned position.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective January 1, 1965, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreements may be considered a part of this Statement of Facts. Various Rules and Memorandums therefore may be referred to from time to time without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Rules Agreement, particularly, Memorandum of Understanding No. 47 and Rule 5-A-3 when it refused and failed to assign Clerk Shea to work his regular assigned position on Saturday, October 8, 1966. Clerk Shea on Thursday and Friday prior to his rest day Saturday, October 8, 1966 notified his supervisor that the volume of work on his position was extremely heavy and he would be available and acceptable to working overtime at night or on his rest day. Clerk Shea was advised by the Carrier at the end of his tour of duty on Friday there would definitely be no overtime on Saturday and if any time cards did not make the payroll they

Mr. Shea and Mr. Morrison were unable to agree upon a Joint Statement of Agreed Upon Facts. On November 16, 1966 Mr. Shea, Local Chairman wrote Mr. Morrison rejecting his denial of the claim. Also on November 16, 1966, Mr. Shea, Local Chairman submitted his ex-parte statement of facts to Mr. Newson, General Chairman and Mr. H. J. Bellis, Director of Personnel. (See Employees' Exhibit C.)

On November 21, 1966 Mr. Morrison, Auditor of Disbursements, likewise submitted his ex-parte statement of facts to the same parties. (See Employees' Exhibit D.)

On November 28, 1966 Mr. T. J. Hewson, General Chairman met with the highest officer of the Carrier, Mr. H. J. Bellis, Director of Personnel to further discuss this claim.

On December 2, 1966, Mr. Bellis, Director of Personnel, wrote Mr. Hewson, General Chairman denying the claim. (See Employees' Exhibit E.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the Carrier and the Brotherhood known as "Memorandum of Understanding No. 47." This agreement sets forth the procedures to be followed when it becomes necessary to use regularly assigned employees on their rest days when there are no extra employees available at the pro-rata rate of pay. A copy of the agreement and supplements thereto are attached hereto and made a part hereof, marked "Carrier's Exhibit A."

The Claimant in the instant case is the Local Chairman of the Clerks' Organization who alleges a violation of this agreement, as well as other rules of the controlling agreements. The claim was denied by the Auditor of Disbursements on October 14, 1966. Copies of these letters are attached hereto and made a part hereof, marked Carrier's Exhibit B-1 and Carrier's Exhibit B-2.

The Local Chairman and Auditor of Disbursements were unable to formulate a Joint Statement of Agreed-Upon Facts, and therefore, separate ex parte statements were submitted to the General Chairman and the Director of Personnel for further handling in accordance with the provisions of Memorandum of Understanding No. 4 of the controlling agreement. Copies of these statements are attached hereto and made a part hereof, marked Carrier's Exhibit C-1 and Carrier's Exhibit C-2.

The claim was progressed to the Director of Personnel, the highest officer on the property designated to handle such matters, by the General Chairman and was denied on December 2, 1966. Copies of these letters are attached hereto and made a part hereof, marked Carrier's Exhibit D-1 and Carrier's Exhibit D-2.

(Exhibits not reproduced.)

OPINION OF BOARD: Because of Carrier's setting-up a "dead-line," Claimant advised Carrier he could not finish the work during his regular assignment. When Claimant asked if Carrier would require overtime, Carrier, in unequivocal manner, advised Claimant there would be no overtime. On the

following day, Claimant's rest day, Carrier called Claimant's home to have him perform the overtime but since he was not there, it assigned two (2) other clerical employees.

The Organization contends Carrier violated Agreement No. 47 which reads in part as follows:

"1. When * * * overtime is required in order to fill the regular position on the sixth or seventh day, the following shall apply:

- (a) **The regular incumbent** of the position (or extra employe on the holddown) **will have preference to work the position on the rest day.**" (Emphasis ours.)

It is readily evident that Carrier's absolute announcement regarding overtime caused the situation which developed on Claimant's rest day. Claimant had the right to rely upon such an unequivocating statement and we are of the opinion that inasmuch as same denied Claimant overtime to which he was entitled that Carrier violated the Agreement.

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 the Agreement was violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.