

Award No. 16938

Docket No. CL-16693

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Herbert J. Mesigh, Referee

**PARTIES TO DISPUTE:**

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

**THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6093) that:

(1) Carrier violated Clerks' Agreement and continues to violate the rules contained in the Agreement when on June 1, 1965, it arbitrarily assigned the Group 1 duties of the Chief Clerk at Waterbury, Connecticut, rate per day \$25.2824, to a Group 2 position paying a lesser rate.

(2) Mr. M. Naylor, seniority date 10-22-46, as a Group 2 employee, is a regularly assigned Tractor Operator with a daily rate \$20.4864 per day (\$2.5608 per hour) and commencing June 1, 1965, he was assigned three (3) hours daily of the higher rated Group 1 duties of the Chief Clerk.

(3) Claimant Naylor shall now be paid the daily amount of \$1.7985 per day commencing June 1, 1965, and each subsequent date thereto.

(4) Carrier shall now re-advertise the position of Tractor Operator because a change in the daily rate in accordance with Rule 39 of the Clerks' Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** On April 30, 1965, the clerical force at Waterbury, Connecticut consisted of the following:

**WATERBURY, CONNECTICUT**

**Present Force and Duties:**

Job 001 - Freight Agent H. W. Holton (Rule 33 - ORT)

Performs cash account work, handles station uncollected, station refunds and station checking account. Also supervises office.

Copies of appeal from General Chairman Farquharson and of decision by the undersigned are attached as Carrier's Exhibits B and C, respectively.

Agreement dated September 15, 1957, between this Company and the Brotherhood of Railway Clerks is on file with this Board and is, by reference, made a part hereof.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Yard check work at Waterbury was performed, prior to May 1, 1965, by the Foreman-Yard Clerk. Position of Foreman-Yard Clerk, rated \$23.0624 per day, was abolished, effective April 30, 1965. The yard check work was supposed to have been assigned to or assumed by the Chief Clerk's position, rated \$25.2824 per day. Claimant asks that he be compensated the difference in pay between that of his regular position, and that of Chief Clerk, a Group 1 position, when he was required to make yard checks for from two to three hours daily, allegedly the higher rated Group 1 duties of Chief Clerk. The facts in the record establish the claim period from May 1, 1965 to March 22, 1966.

It is Carrier's contention that the performance of the yard check for two to three hours per day by Claimant does not raise him to the status of a clerical worker as defined in Rule 2, nor does it entitle him to the payment of the hourly rate of the Chief Clerk. Further, he was not "assigned" to the position of Chief Clerk as that term is used in Rule 61, nor did he fulfill the duties and responsibilities of the Chief Clerk's position during the two or three hours.

Is Claimant entitled under Rule 61 - "Preservation of Rates" and related rules to a higher rate of pay, if, as alleged by the Organization, said yard check duties were identified with the Chief Clerk's position and assigned by the Carrier to Claimant?

Rule 61 of the parties' Agreement provides:

"Employees assigned to higher rated positions shall receive the higher rate while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

An 'assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied whether the regular occupant of the position is absent or whether the assignee does the work, irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute an assignment. It shall not be the practice to regard a lower rated employee as 'assisting' a higher rated employee when the volume of work has increased to the extent of justifying the establishment of an additional higher rated position."

Rule 2 of the parties' Agreement defines clerical workers as "Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence, and similar work."

The crux of the entire dispute is whether or not said yard check duties were assigned to, identified with and assumed by the Chief Clerk's position

subsequent to the abolishment of the Foreman-Yard Clerk's position. Prior awards submitted by the Organization to support the claim herein have been carefully considered, and we find that in these awards the Board found first, that said duties were identifiable with a higher rated position, and second, that an assignment, as contemplated by the "Preservation of Rate" Rules, had been made and duties performed either in whole or in part thereby entitling Claimants to be compensated at the rate of a higher rated position.

In the instant dispute we find insufficient evidence in the record to establish that said yard check duties had become identified with and assumed by the Chief Clerk's position. Correspondence on the property infers that the yard check duties were "... turned over to an employe in the Freight Agent's office . . ."; then Claimant, in turn, performed them. Although the Organization implies that it was their understanding that these duties of checking the yard, which remained to be performed, were supposed to have been assigned to the position of Chief Clerk, the facts, as set forth in the record, do not support their claim.

Therefore, we must hold that the Claimant, during the period herein involved, was not assigned as contemplated by Rule 61 - "Preservation of Rates", thereby entitling him to be compensated at the rate of a higher rated position. The claim will 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 by the Carrier.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1969.