



Award No. 17170

Docket No. CL-17938

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

PIEDMONT AND NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6544) that:

(a) Carrier violated the Agreement at Greenville, South Carolina, when it required Mr. John D. Kerns, Relief Yard Clerk, to perform for approximately five (5) hours per day, the duties of a higher rated clerical position and refused to compensate him at the higher rate in accordance with Rule 42 of the Clerks' Agreement.

(b) The Carrier shall be required to compensate Mr. John D. Kerns in the additional amount of \$1.17 per day, for eighty-one days, a total amount of \$94.77, for the dates he was required to make the Industrial Check as shown on his daily time reports for the period beginning October 16, 1966, through October 15, 1967.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimant in this case holds position and the Piedmont and Northern Railway Company.

Mr. John D. Kerns is carried on the Piedmont and Northern Railway Company, South Carolina Agency, Seniority Roster—Group 1 Clerks, with a seniority date of September 8, 1956. He, at the time of this claim, had been an employe of the Piedmont and Northern Railway Company for approximately eleven years.

Mr. Kerns was employed at River Junction-Greenville Freight, Greenville, South Carolina, as Relief Yard Clerk with a rate of \$21.533 per day at the time these claims originated. Mr. Marvin Mitchell was employed at Greenville Freight, Greenville, South Carolina, as Clerk, with rate of \$22.703 per day at the time these claims originated. On the two days per week that Claimant Kerns was required to work at the Greenville Freight he was required to perform work assigned by bulletin to the position held by Mr. Mitchell, but was not allowed the higher rate of the position held by Mr. Mitchell.

class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

In 1961 there was in existence at Greenville, S. C. Freight Station of this Carrier a position entitled "Clerk," the preponderating duties of which were stated to be "Transferring and checking LCL freight in and out." The rate of pay of that position was \$19.72 per day, or \$1.17 per day higher than the rate of pay of a yard clerk (see Carrier's Exhibit 1).

Due to a severe decline in the volume of LCL business, effective January 1, 1962, the position of "Clerk" was abolished and a new position of "Clerk" was established with preponderating duties stated to be "Handling LCL freight, warehouse duties, and making yard check." The rate of pay of the new position was \$19.72 per day, or \$1.17 per day more than the rate of pay of a yard clerk (see Carrier's Exhibit 2). Neither party requested a change in the rate of pay of the "Clerk's" position under the provisions of Rule 44.

By 1966, LCL and warehouse duties had declined to a point where they were for all practical purposes non-existent and on March 24, 1966, the position of "Demurrage Clerk-Yard Clerk," rate of pay \$22.703 per day, at River Junction Yard Office (a yard about 1.5 miles from the Greenville Freight Station and under the general supervision of the Carrier's agent at Greenville) was abolished and a new position of "Yard Clerk" was established with rate of pay \$21.533 per day (see Carrier's Exhibits 3a and 3b). On the same day the position of "Clerk" at Greenville Freight Station was abolished and a new position of "Clerk" was established with preponderating duties stated to be "Transferring LCL freight in and out, making industrial yard check and handling demurrage records." The rate of pay of the new "Clerk's" position was \$22.703 per day, or \$1.17 per day higher than the rate of pay of a yard clerk (see Carrier's Exhibit 4).

On May 3, 1966, the position of "Relief Yard Clerk" at River Junction Yard Office was abolished and a new position of "Relief Yard Clerk" was established to work three days per week as a relief yard clerk at River Junction Yard Office and two days per week at Greenville Freight Station with preponderating duties stated to be "Doing general clerical work as lined up by the agent." In a later bulletin dated May 18, 1966, preponderating duties were stated to be "General Yard-General Clerical Duties." The rate of pay of this position was \$21.533 per day, the same as our standard rate for all yard clerks and relief yard clerks, or \$1.17 lower than the rate of pay of the "Clerk's" position at Greenville Freight Station (see Carrier's Exhibits 5 and 6).

The "Relief Yard Clerk" has been lined up by the agent to make the industrial yard check on the two days per week that he reports to Greenville Freight Station.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period involved in this dispute, Claimant occupied a regular 5-day assignment titled Relief Yard Clerk, bulletined with "Preponderating duties: General Yard-General Clerical duties," rate of pay \$21.533 per day. His assignment consisted of three days at River Junction and two days (Tuesday and Wednesday) at Greenville Freight Agency, with rest days of Thursday and Friday. The instant claim,

as alleged by the Organization, is predicated on the fact that on Tuesdays and Wednesdays, the claimant was required to spend four or more hours of his tour of duty in making industrial checks, which is one of the preponderating duties of the regularly assigned clerk at the Greenville Freight Agency whose rate of pay is \$22.703 per day, Tuesday through Saturday, rest days Sunday and Monday. On Mondays, still another employe performed the work of making industrial checks and paid at the higher rate of \$22.703. The claim is that Carrier should also have compensated Claimant at the higher rate of \$22.703, instead of \$21.533, for the higher-rated work required of and performed by him on Tuesdays and Wednesdays during the period October 16, 1966 through October 15, 1967.

The Carrier rejected the claim on the ground that the Claimant was not entitled to the higher rate as he did not perform "all of the duties and responsibilities" of the position and "in particular does not assume those duties and responsibilities which are the basis for the higher rate of pay."

In essence, we would agree with the latter statement, however, in our view, an employee is not required to perform all of the duties. It is sufficient, if he performs a major portion of those duties for a substantial part of the day. The facts herein indicate that the Claimant was required to spend as much as five hours per day performing Industrial Checks.

Under the circumstances, we are of the opinion that the Claimant was entitled to be compensated at the higher rate for the period of the claim.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.