



Award No. 17206

Docket No. CL-16503

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6063) that:

1) Carrier violated the Clerks' Rules Agreement at Minneapolis, Minn. by unilaterally removing the regularly assigned occupant of Machine Operator Position 8767 from his position to perform Key punching, thereby requiring him to suspend work of his position to absorb overtime that otherwise would have been required of a Key punch Operator position.

2) Carrier shall now be required to compensate employe B. C. Ruddy, Jr., regularly assigned occupant of Key punch Operator Position 8774, at the time and one-half rate of his position for the number of hours on the following dates:

6/ 1/65—2 hrs. 10 min.	6/25/65—7 hrs. 55 min.
6/ 3/65—5 hrs. 20 min.	6/28/65—5 hrs. 45 min.
6/ 4/65—5 hrs. 10 min.	6/29/65—5 hrs.
6/ 7/65—5 hrs. 5 min.	6/30/65—5 hrs. 56 min.
6/ 8/65—4 hrs. 55 min.	
6/ 9/65—5 hrs.	7/ 1/65—6 hrs. 5 min.
6/10/65—5 hrs. 20 min.	7/ 2/65—5 hrs.
6/11/65—5 hrs. 10 min.	7/ 6/65—6 hrs.
6/14/65—5 hrs. 35 min.	7/ 7/65—5 hrs. 45 min.
6/15/65—7 hrs. 45 min.	7/ 8/65—4 hrs. 50 min.
6/16/65—5 hrs. 47 min.	7/12/65—5 hrs. 10 min.
6/17/65—5 hrs.	7/13/65—2 hrs. 10 min.
6/18/65—4 hrs. 55 min.	7/14/65—6 hrs. 45 min.
6/21/65—5 hrs. 50 min.	7/15/65—6 hrs. 30 min.
6/22/65—6 hrs. 45 min.	7/16/65—4 hrs. 57 min.
6/23/65—4 hrs. 55 min.	7/26/65—3 hrs. 30 min.

June 21, 1965	20 minutes
June 25, 1965	2 hours & 25 minutes
June 28, 1965	15 minutes
June 30, 1965	26 minutes
July 1, 1965	35 minutes
July 6, 1965	30 minutes
July 7, 1965	15 minutes
July 14, 1965	1 hour & 15 minutes
July 15, 1965	1 hour

On June 22, 1965, employee D. Stuber, the occupant of Machine Operator-Grade A Position No. 8767 (rate—\$22.1924 per day) on that date, was temporarily assigned by proper authority to Key punch Operator-Clerk Position No. 8775 (rate—\$21.4624 per day) for 5 hours and 30 minutes and to Key punch Operator-Clerk Position No. 8772 (rate—\$21.4624 per day) for 1 hour and 15 minutes during which time employee Stuber fulfilled the duties and responsibilities of Key punch Operator-Clerk Position Nos. 8775 and 8772.

On each of the dates shown above when higher rated employees Ryan and Stuber were temporarily assigned by proper authority to lower rated Key punch Operator-Clerk positions they did not have their rates reduced, but instead were compensated for 8 pro rata hours each day at the higher rates of the positions to which they were regularly assigned and/or occupying.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, former General Chairman, under date of December 9, 1965, Carrier's Exhibit "A."

Letter written by Mr. Amour to Mr. Gilligan under date of January 21, 1966, Carrier's Exhibit "B."

Letter written by Mr. Amour to Mr. Gilligan under date of May 5, 1966, Carrier's Exhibit "C."

(Exhibits not reproduced.)

OPINION OF BOARD: Dockets, CL-16503-16464-16639 and 16640 are submitted together to the Board for an adjudication. The facts as set forth in each docket are essentially the same in that on various dates specified in the statement of claims, Employees regularly assigned to positions covered by the Clerks' Agreement, other than Key punch Operators, were allegedly transferred during their regularly assigned hours to Key punch Operator work.

In Dockets, CL-16640 and CL-16639, Employees raise procedural issues by contending that Carrier failed to decline the claims within 60 days as required by Article V of the Agreement dated August 21, 1954. An examination of the records does not reveal that Carrier failed to decline

the claims within the 60-day time limits of said Article V; therefore, we will proceed on the merits as presented.

The question to be resolved in the instant claims is:

Did Carrier violate the Agreement, specifically provisions of Rule 32(h), when it assigned other regularly assigned employees to Key punch Operator positions?

Rule 32(h) reads:

"Employees will not be required to suspend work during regular hours to absorb overtime."

It is Petitioner's argument advanced in all four cases, that by requiring the employees to vacate their regularly assigned positions during their regularly assigned hours of their positions and temporarily assigning them to Key punch Operators work, was a suspension of work during their regular hours for the sole purpose of absorbing overtime, that otherwise would have occurred to Claimants' position.

Carrier contends that the employees involved were temporarily transferred in accordance with Rule 17, and that the employees have not established that overtime was required or performed and in the absence of any such showing, that said employees suspended their work to absorb overtime, Rule 32(h) was not violated.

Rule 17—Preservation of Rates, reads as follows:

"(a) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

(b) An employee temporarily assigned by proper authority to a position paying a higher rate than the position to which regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. An employee temporarily assigned by proper authority to a position paying a higher rate of pay for less than four (4) hours in one day will be paid the higher rate therefor on the minute basis.

(c) A "temporary 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 the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to the temporary increase in the volume of work does not constitute a temporary assignment.

(d) The provisions of this rule do not apply to employees performing work of an employee absent by reason of sickness when sick leave payment is allowed and when none of the regular assignments in the office, in which is located the assignment of the employee absent account of sickness, is blanked by the Carrier."

After a careful study of the records involved herein and consideration given to "case law" submitted and cited by the parties, in which rules identical to or like those in the instant disputes, the Board does not find any violation of the Rules Agreement.

We agree that an employee may not be taken from his regular assignment and used on the work of another position where it would result in depriving the employee of the other position of overtime, which would otherwise accrue, however, past awards have firmly established the principle—that before the "suspension of work" rule is applicable, Claimants must show by competent evidence that they were in truth and fact deprived of overtime by the temporary assignments of other employees to their positions to absorb overtime.

Under the factual situations before us, this was not established, as there is no evidence that had the other employees not been used, the work involved would have to be performed by the Claimants' on an overtime basis. Petitioner's allegations were a conclusion and opinion, unsupported by probative evidence. In support see Awards 13192, 13218, 11406, 14080, 14974 and 15046. The Agreement contains no provision which would require Carrier to call and use the Claimants on an overtime basis, under the circumstances related, in each case in lieu of applying the specific provisions of Rule 17.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.