

**Award No. 18122**  
**Docket No. CL-18433**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

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

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6648) that:

(a) Carrier violated the provisions of the Clerks' Agreement when on June 10, 1968 it required Train Desk and Crew Clerk No. 4, Mr. Hevil Hayes to suspend work on his regular assignment in order to perform the work of General Clerk in billing cars and performing janitorial duties intermittently throughout his shift, 11:00 P. M. June 10th to 7:00 A. M. June 11th, 1968.

(b) Carrier further violated the provisions of the Clerks' Agreement on June 10, 1968 when it required Delbert Hardy, occupying the position of Train and Crew Clerk No. 3 to vacate his assignment in order to perform the janitorial duties assigned to the General Clerk intermittently during his tour of duty 11:00 P. M. June 10th to 7:00 A. M. June 11th, 1968.

(c) Mr. Hevil Hayes shall now be compensated at the rate of time and one-half for eight hours on June 10, 1968 in performing the duties of General Clerk as referred to in Claim (a) above in lieu of eight hours at the straight time rate he was allowed for service on that date.

(d) Mr. Delbert Hardy shall now be allowed eight hours at the rate of time and one-half for June 10, 1968 account required to perform the duties of the General Clerk intermittently during his tour of duty as referred to in Claim (b) above in lieu of eight hours at the straight time rate he was allowed for service on that date.

**EMPLOYEES' STATEMENT OF FACTS:** Carrier maintains a combined Yard and Station Force at Portola, California, which is a terminal on the Western Division, where service is performed on an around-the-clock basis seven days a week. Three positions existed on the third shift on Tuesday, June 10, 1968 and were comprised of a General Clerk working 12:00 Midnight

consolidation. On April 19, 1967, Mr. R. R. Larson, the incumbent of the position of Train Desk Crew Clerk Position No. 6, terminated as a Clerk and entered service as a Locomotive Engineer. The position of Train Desk Crew Clerk No. 6 was, therefore, discontinued, reducing the total number of Train Desk Crew Clerks to six, or two per each shift.

On June 5, 1968, Mr. B. E. Summers, the incumbent of the position of General Clerk, submitted his resignation vacating the position of General Clerk and, therefore, the position of General Clerk was discontinued. With the termination of Mr. Larson and Mr. Summers as Clerks, the reduction of two positions contemplated by the consolidation was complete.

By notice dated June 3, 1968 (attached as Carrier's Exhibit B) billing work and janitors' work was assigned to the positions of Train Desk Crew Clerks by Trainmaster M. C. McManus. Both billing work and janitor work has been performed in the Portola yard office by Train Desk Crew Clerks since that date.

The instant claims were submitted by Messrs. D. Hardy and H. Hayes (Carrier's Exhibits C and D) and denied by the timekeeper in letters dated June 14, 1969 (Carrier's Exhibits E and F). The claims were thereafter combined for further handling. Attached as Carrier's Exhibits G, H, I, J, K and L, are copies of the correspondence in connection with the progression of the instant claim on the property.

Copy of the controlling agreement between Carrier and the Brotherhood of Railway Clerks, effective December 16, 1943, revised September 16, 1965, is on file with the Third Division, National Railroad Adjustment Board, and is hereby incorporated herein by reference.

Rule 20, paragraph (i) is quoted below for your ready reference.

"If a qualified employe is not available pursuant to the provisions of Rule 31(f), the Carrier may instruct an employe to vacate his regular assignment and work a portion or all of a short vacancy on the same shift for which service he will be paid for actual time worked on the vacancy at the time and one-half rate of the higher rate of the two positions involved and at the straight time rate for actual time worked on his own assignment; provided, however, that if he works four (4) hours or more on the vacancy, he shall be paid at the rate of time and one-half for all time worked on both positions."

(Exhibits not reproduced.)

**OPINION OF BOARD:** In our consideration of this case we are confined to the record made on the property. The parties are barred from raising issues for the first time before this Board; nor may they introduce evidence in addition to that adduced on the property.

Carrier admits that Claimants were assigned work as alleged in the Claim.

In Clerks' appeal to Carrier's Manager of Personnel, the chief operating officer of the Carrier designated to handle such disputes, Clerks narrowed the issue to:

"Having been required to perform work of another position during assigned hours, Messrs. Hardy and Hayes are entitled to be compensated under the provisions of Rule 20(i)."

Rule 20(i) reads:

"If a qualified employee is not available pursuant to the provisions of Rule 31(f), the Carrier may instruct an employee to vacate his regular assignment and work a portion or all of a short vacancy on the same shift for which service he will be paid for actual time worked on the vacancy at the time and one-half rate of the higher rate of the two positions involved and at the straight time rate for actual time worked on his own assignment; provided, however, that if he works four (4) hours or more on the vacancy, he shall be paid at the rate of time and one-half for all time worked on both positions." (Emphasis ours.)

Clerks adduced no evidence of "actual time worked" in the performance of the duties which it alleges were wrongfully assigned to Claimants. Absent such evidence Clerks failed to establish proof of an indispensable fact requisite to application of Rule 20 (i). We, therefore, will dismiss the Claim for failure of proof. Consequently, we do not reach the question as to whether the work involved was wrongfully assigned to Claimants.

**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 Claim fails for lack of proof.

#### **AWARD**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of THIRD DIVISION

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.