

Award No. 18155

Docket No. CL-18445

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

**KENTUCKY AND INDIANA TERMINAL
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6654) that:

1. The Carrier violated the rules provision of the current Clerks' Agreement on February 19 and 26; March 4 and 25; April 1, 8, 15, 22, 29; May 6, 13, 27; June 3, 10, 17, 24; July 1, 8, 15, 22, 29; August 5, 12, 26, 1968, when it removed Clerical Machine Operator/Keypuncher C. R. Boyd from his regular assigned position and required him to work the position of Clerical Machine Operator and Utility Clerk position.
2. The Carrier violated the provisions of the Clerks' Agreement when it blanked the position of Clerical Machine Operator/Keypuncher.
3. Mr. C. R. Boyd be compensated at his daily rate of \$24.38 for each day of claim, as set out above, in addition to the rate of pay of Clerical Machine Operator and Utility Clerk already allowed him when he was taken off his regular assignment on these dates.

EMPLOYEES' STATEMENT OF FACTS: Late in 1967 due to an increase in business, a six day assignment was required to be worked on the seventh day. From September, 1967, through the first two weeks in February, 1968, a joint check of the carrier's payroll records indicate this position was relieved on the seventh unassigned day from the guaranteed Extra Board for thirteen days and worked two days at overtime.

Commencing with the date of first claim, on February 19, 1968, Claimant Boyd was ordered to work the position and did so under protest for twenty-two days until such time as the seventh (7th) day was put on a relief position on September 2, 1968, relieving the position on Monday, thereby eliminating the cause of the claim.

Conference was held again on March 18, 1969, at the request of the General Chairman. During this conference the Assistant Vice President-Labor Relations presented the Organization with copy of a letter dated March 17, 1969 (CX-12), from the General Freight Agent, confirming the understanding at the time the six-day assignment was set up, and the use of Extra Board Clerks on Mondays when available.

Under date of June 16, 1969, the Executive Secretary of the Third Division advised the Carrier that written notice of intention to file Ex Parte Submission within thirty days had been received from the Organization covering this dispute, and Carrier's reply was to be filed by June 14, 1969. Upon reading the Executive Secretary's notice, the Carrier had knowledge for the first time that the Union had changed the claim in certain respects.

After reviewing the carefully altered claim, we are forced to take specific exception with the Organization's change of the title of Claimant's position, wherein it is referred to as "Clerical Machine Operator/Keypuncher." We are unaware of the motive behind the Organization's fabrication, but experience has taught us the precaution of clarifying the record.

The applicable agreement provision is Memorandum of Understanding No. 4 attached hereto as CX-14. Your attention is directed to the job titles in paragraph 4, particularly "Clerical Machine Operator" and "Key Punch Operator." The only change in the Memorandum is the automatic upward revision of rates of pay which at the time of the claim were Clerical Machine Operator - \$24.38, and Key Punch Operator - \$23.65. Claimant was paid at the \$24.38 rate, the same rate petitioned for in the claim.

We have not as yet seen fit to use the Key Punch Operator title or rate; rather, we classify these clerks Clerical Machine Operators or higher, and pay them accordingly so they may be used on whatever duties are necessary to meet the demands created by the fluctuation of the work load.

The Union cannot support its version of the title by reference to either the agreement or bulletins. It certainly made no reference to the fictitious title during the handling on the property; to the contrary, the Union used the one which the Carrier maintains is the correct designation.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to August, 1967, the Carrier maintained in the General Freight Agent's Department the IBM positions set forth below:

1 - Chief Clerk Car Accounts

1 - Chief Clerical Mach. Oper.	6AM-2PM	M-F	Off Sat-Sun
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1 - Trace & Machine Operator	8AM-5PM	Th-M	Off Tu-Wed
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1 - Per Diem & Machine Operator	6AM-2PM	M-F	Off Sat-Sun
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5 - Clerical Machine Operators:

One - 8AM-5PM	M-F	Off Sat-Sun
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One - 7AM-3PM	M-F	Off Sat-Sun
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One - 3PM-11PM	Tu-Sat	Off Sun-Mon
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One - 11PM-7AM	Th-M	Off Tu-Wed
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One - Various relief		Off Th-Fri
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Effective August 1, 1967, the Carrier replaced its former car carding procedure with a Bill Rack system, a perpetual inventory procedure, designed to show the exact location at all times of every car on the rails of the K&IT or any industry it serves. This new procedure required IBM cards to be cut immediately on arrival of every car as the waybill was marked by Rate and Bill Clerks of the same department. The change in timing of performance of the key punching required that sufficient personnel be on duty and available to perform the work at the instant it arose. One additional key punch machine was installed and the following supplementary jobs were added:

1 - Clerical Machine Operator & Utility Clerk,	7A-3P	Off Sun-Mon
1 - Clerical Machine Operator & Utility Clerk,	3P-11P	Off Mon-Tu
1 - Clerical Machine Operator & Utility Clerk,	11P-7A	Off Wed-Th
1 - Clerical Machine Operator & Utility Clerk,	Various relief	Off Fri-Sat

The second and third shift positions were 7-day positions. The first shift position was a 6-day position with no relief on Mondays.

Claimant's position was located in this IBM section. The Employees argue that due to an increase in business the six day position was required to be filled seven days. They point out that such unassigned day was filled by Extra Board employees for 13 days and was worked 2 days on overtime and that beginning on February 19, 1968, Carrier discontinued utilizing employees from the Guaranteed Extra Board to fill the position on the 7th day and, instead, required the regular occupant of the position of Clerical Machine Operator-Keypuncher, the Claimant, to perform duties of the position of Clerical Machine Operator-Utility Clerk. The Employees argue that such action caused Claimant to suspend work on his own position to perform work which would have otherwise accrued to the regular occupant of the Clerical Machine Operator-Utility Clerk on an overtime basis. The Employees rely on Rules 3 and 7 (Seniority), 8 (Promotion, Assignments and Displacements), 9 (Bulletins), 14 (Declining Promotions), 21 (Changing Duties), 45 (Absorbing Overtime) and 50 (Weekly Guarantee).

The Carrier argues that no overtime was involved; only one department was involved; Clerical Machine Operator and Utility position was not in existence on the days claimed; the Claimant was properly compensated; and work performed was the same as on other days.

After careful review of the Record and the Agreement between the Kentucky and Indiana Terminal Railroad Company and its clerical and other employees, we find that the Claimant has failed to meet his burden of proving that the actions of the Carrier violated the Agreement of the parties.

The question as to who decides what position or work is needed or required has been previously passed upon by this Board. The determination of the number of employees needed to perform its work is the function of Management except as it has limited itself by Agreement. The determination of which positions need to be filled, and what work needs to be performed, is vested in the Carrier. See Awards 16851, 15920, 15046, 13490, 13328, 13048, among others. All inherent rights of management that the Carrier has not contracted away still remain with it. When all work can be effectively performed by staggering of regularly assigned employees, the necessity for relief assignments on rest days does not exist. See Awards 10622 and 16851.

We have carefully examined the Record, and we find no evidence to support the contention of suspension of work to absorb overtime under Rule 45. See Awards 16943, 16851, 16802, 16611, 16530, 15484, among others.

Finally, this Board has held that work weeks of Employees of the same class and the same seniority district may be staggered in accordance with the Carrier's operational requirements (Rule 42). See Awards 16851, 14189, 13527, 12788, 10622, 6946 and 6075, among others.

After searching the record we find that the Claimant has failed to meet his burden of proving that the actions of the Carrier violated the Agreement of the parties. We will deny 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1970.