

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22425  
Docket Number CL-22457

George S. Roukis, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8522) that:

(1) Carrier violated the Clerk-Telegrapher Agreement at St. Marys, West Virginia, when on the dates of September 6, 7, 13, 14, 20, 21, 27, 28; October 4, 5, 12, 13, 15, 19, 20, 26; November 2, 9, 11, 23, 30; December 1, 7, 13, 14, 1975; March 7, 13, 14, 20, 21, 22, 27, 28; April 2, 4, 6, 13, 18, 23, 24, 26, 30; May 1, 2, 4, 8, 9, 15, 16 and 17, 1976, it failed to call Operator Clerk F. P. Clegg, to perform overtime work in the Agent's Office and used an employee junior in seniority and,

(2) Carrier shall now be required to compensate Operator Clerk F. P. Clegg, overtime rate of pay of Position C-275, as herein-after listed on the dates in question:

1975

1976

September 6 - 4 hours (Saturday)	March 7 - 8 hours (Sunday)
September 7 - 4 hours (Sunday)	March 13 - 8 hours (Saturday)
September 13 - 8 hours (Saturday)	March 14 - 4 hours (Sunday)
September 14 - 4 hours (Sunday)	March 20 - 8 hours (Saturday)
September 20 - 8 hours (Saturday)	March 21 - 4 hours (Sunday)
September 21 - 4 hours (Sunday)	March 22 - 1 hour (Monday)
September 27 - 8 hours (Saturday)	March 27 - 4 hours (Saturday)
September 28 - 4 hours (Sunday)	March 28 - 4 hours (Sunday)
October 4 - 8 hours (Saturday)	April 2 - 2 hours (Friday)
October 5 - 4 hours (Sunday)	April 4 - 4 hours (Sunday)
October 12 - 4 hours (Sunday)	April 6 - 2 hours (Tuesday)
October 13 - 4 hours (Monday)	April 13 - 1 hour (Tuesday)
October 15 - 2 hours (Wednesday)	April 18 - 4 hours (Sunday)
October 19 - 4 hours (Sunday)	April 23 - 6 hours (Friday)
October 20 - 2 hours (Monday)	April 24 - 4 hours (Saturday)
October 25 - 8 hours (Saturday)	April 26 - 1 hour (Monday)
October 26 - 4 hours (Sunday)	April 30 - 1 hour (Friday)

<u>1975</u>		<u>1976</u>	
November	2 - 4 hours (Sunday)	May	1 - 4 hours (Saturday)
November	9 - 4 hours (Sunday)	May	2 - 4 hours (Sunday)
November	11 - 10 hours (Tuesday)	May	4 - 2 hours (Tuesday)
November	23 - 4 hours (Sunday)	May	8 - 8 hours (Saturday)
November	30 - 4 hours (Sunday)	May	9 - 4 hours (Sunday)
December	1 - 2 hours (Monday)	May	15 - 4 hours (Saturday)
December	7 - 4 hours (Sunday)	May	16 - 4 hours (Sunday)
December	13 - 4 hours (Saturday)	May	17 - 2 hours (Monday)
December	14 - 4 hours (Sunday)		

OPINION OF BOARD: Claimant in this case was employed as an Operator/Clerk, 7:00 A.M. to 4:00 P.M., Monday through Friday at St. Marys, West Virginia. He came to that position after having been disqualified from the position of Agent/Operator at St. Marys. The Agent/Operator and Operator/Clerk are the only two (2) clerical positions at St. Marys. Both positions have a work week of Monday through Friday with rest days of Saturday and Sunday.

The claims here involved cover various unassigned Saturdays and Sundays, as well as certain assigned work days, on which the junior Agent/Operator was utilized to perform varying amounts of overtime work to the exclusion of the senior Operator/Clerk (claimant).

The Rule of the Agreement which is applicable in this situation is Rule No. 4 - Overtime. Rule 4 reads, in pertinent part, as follows:

"(b-1) When it is necessary to work overtime before or after assigned hours, employees regularly assigned to the position on which overtime is worked will be given preference.

"(b-2) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

" \* \* \* \* \*

"Understanding.

"(1) When overtime is necessary to perform work that is exclusive to a particular position, preference will be given in the order shown to:

- "(a) the incumbent of the position
- (b) qualified employees in the bureau in seniority order
- (c) qualified employees in the office in seniority order
- (d) qualified employees on the roster in seniority order

"(2) When overtime is necessary to perform work that is assigned to several positions but not exclusive to any single one, preference will be given in the order shown to:

- "(a) the incumbent of the positions on which the work is intermingled in seniority order
- (b) qualified employees in the bureau in seniority order
- (c) qualified employees in the office in seniority order
- (d) qualified employees on the roster in seniority order."

From our review of the record and in consideration of the arguments presented by the parties, it is apparent that some of the duties at St. Marys are shared by the incumbents of the two (2) positions. This is particularly true in connection with the Operator (train order) duties. It is equally apparent that there are certain of the duties at this location that are germane to only the Agent/Operator. This conclusion is enhanced by the fact that claimant had previously been disqualified from the Agent/Operator position - which disqualification was not challenged - but still could and does function satisfactorily on the Operator/Clerk position.

Petitioner, in their presentation to this Board, has outlined, by claim dates, the "Duties Performed" by the Agent/Operator. Carrier

has challenged petitioner on certain of the claim dates where it is contended that only the work of "copy train orders" was performed. However, Carrier has offered nothing of probative value to show what exclusive Agent/Operator work was also performed on these dates. From this tabulation we can conclude that there were unassigned days on which Agent/Operator work - work of the type which brought about claimant's previous disqualification - was performed.

In regard to the claim dates which represent assigned work days, neither party has given this Board sufficient probative evidence to permit us to make a valid determination of the merits or lack thereof on those dates. Therefore, the claims on assigned work days are denied for lack of proof.

When we review the language of Rule 4 and apply that language to the fact situation we have here, we find that there are two (2) separate determinations to be made. First, on certain of the unassigned days there was only work performed that is assigned to both positions - namely train order work. On such claim days, seniority order is required in the assignment of overtime by paragraph 2(a) of the Understanding to Rule No. 4. Therefore, on such unassigned days as listed in the Statement of Claim, on which only train order work was performed, we will sustain the claim as presented. Secondly, on other of the unassigned days there was work performed which was exclusive to the Agent/Operator position - namely the type of agency work which caused claimant's disqualification from the Agent/Operator position. On those claim dates, "the incumbent of the position" is entitled to the overtime work in accordance with the provisions of paragraph 1(a) of the Understanding to Rule 4. Therefore, on such unassigned days as listed in the Statement of Claim, we will deny the claims as presented.

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;

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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 in part and denied in part as outlined in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.