

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22855
Docket Number CL-22821

Martin F. Scheinman, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8781)
that:

1. The Carrier violated the Rules of the Clerks' Agreement including but not limited to Rule 48 and Section XII of Addendum No. 1 of DP-451 when on February 22 and 23, 1978, it suspended Mr. D. A. Fuhrig, Clerk, St. Louis, Missouri from his regular assigned position of Chief Clerk - Iron and Steel, and required him to work the Position of Chief Clerk - Grain from 4:00 p.m. to 5:00 p.m., February 22 and from 8:15 a.m. to 9:50 a.m., February 23 and then refused to compensate him for this violation.

2. Carrier shall compensate Mr. D. A. Fuhrig, Clerk, St. Louis, Missouri for 2-1/2 hours' pay at the rate of time and one-half of Chief Clerk - Grain Position for February 22 and 23, 1978, account the Carrier required him to suspend work on his regular assignment.

OPINION OF BOARD: Claimant, D. A. Fuhrig, Clerk, St. Louis, Missouri is the regularly assigned occupant of the Chief Clerk - Iron and Steel Position. As the regular occupant of that Position, Claimant's hours of work are Monday through Friday, 8:15 a.m. to 12:15 p.m. and 1:00 p.m. to 5:00 p.m. with Saturday and Sunday as rest days.

On February 22 and 23, 1978, there existed a vacancy in the Chief Clerk - Grain Position as a result of the former occupant of that Position being dismissed from service of the Carrier effective February 14, 1978. The Chief Clerk - Grain Position was blanked on both February 22nd and 23rd.

The Organization contends that Claimant, on Wednesday, February 22, 1978, during the hours of 4:00 p.m. - 5:00 p.m. and on Thursday, February 23, 1978, during the hours of 8:15 a.m. - 9:00 a.m., was required to suspend work on his regularly assigned position and perform duties of the blanked position of Chief Clerk - Grain. The Organization argues that had Claimant not suspended work on his regular assignment, he would have performed the work on an overtime basis. The Organization claims that Carrier, by its

action, violated Rule #48 "Absorbing Overtime." The Organization also asserts that Article XII of Addendum No. 1 of the Extra Board Agreement has been violated. It asks that Claimant be compensated for 2½ hours pay at the rate of time and one-half of the Chief Clerk - Grain position.

Carrier, on the other hand, denies that it violated the Agreement. It maintains that Claimant was not required to suspend work on his position to absorb overtime. Carrier also denies that Claimant performed work of the blanked position.

A careful reading of the record, as well as the submissions to this Board, indicate that the crux of the Organization's claim, here, relies upon Rule #48. Rule #48 states:

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

NOTE: Under the provisions of this rule, an employee may not be requested to suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an employee cross craft lines to assist another employee. It is the intention, however, that an employee may be used to assist another employee during his tour of duty in the same office or location where he works and in the same seniority district without penalty. An employee assisting another employee on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing rules which provide for payment of the highest rate for entire tour of duty will continue in effect. An employee assisting another employee on a position paying the same or lower rate will not have his rate reduced. (Article VI - ABSORBING OVERTIME - FEBRUARY 25, 1971 NATIONAL AGREEMENT).

This Board has on many occasions interpreted this language. In order to prevail, a Claimant must show that he was required to suspend work on his regular assignment to perform the work of another assignment which, otherwise, would have been performed on an overtime basis by Claimant. (See Awards No. 7167, 5331, 13192, 14080, 14242, 14974, 16802). That is, Claimant must show that the work performed would have been performed on an overtime basis if he had not suspended his work.

The disputed duties consisted of "compiling revised pages 15 and 35 to M-K-T Tarriff 10000 and taking same to the printer and proof-reading same and directing the printer to provide adequate supply to General Freight Office." (Emphasis added). The Organization argued that this work could have been performed on an overtime basis "before or after his assigned hours or on rest days."

The unrefuted evidence is that the printer, John S. Swift Co. Inc. is open for business Monday - Friday, between the hours of 8:30 a.m. and 4:30 p.m. The Swift Co. is closed on Saturdays and Sundays. Given the printer's involvement in the described tasks, it appears obvious that the work had to be performed during Swift's operating hours. Thus, it would be impossible for Claimant to perform the work after his assigned hours or on Saturdays or Sundays since the printer would be closed.

Therefore, we must conclude that Claimant was not denied anticipated or earned overtime in contravention of the Agreement since no overtime had been earned or could reasonably be anticipated. In short, Claimant has failed to establish the necessary elements of a Rule #48 violation.

While the central element of the Organization's claim relies upon Rule #48, a violation of Article XII of Addendum No. 1 of the Extra Board Agreement is also alleged.

Carrier has the right to blank positions on which vacancies occur on a day to day basis. This much is not contested. However, the Organization argued that the Chief Clerk - Grain Position was not blanked on February 22nd and 23rd because work of the Position was performed. It provided numerous citations to support its view that a position is blanked only when no one works it. See for example, Awards 19668, 7255, 7034.

Claimant has the burden of supporting its assertion that the work of the position was performed by another employe on February 22nd and 23rd. It has failed to meet that burden here. Claimant did not establish that the disputed work normally accrued to the Chief Clerk - Grain Position. As such, 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 Employes involved in this dispute are respectively Carrier and Employes 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:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.