

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23570
Docket Number CL-23405

Herbert Fishgold, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9002) that:

CLAIM NO. 1

- (a) The Carrier violated the BRAC Clerical Agreement, Rules 12, 18, 23, 24, 42, 43, 47 and others when they allowed and/or permitted Ms. Mary Smith to perform duties consisting of Station & Office timekeeper, assigned to position A-626, which was occupied by the incumbent Mr. George Greenhill prior to position A-626 being abolished on Feb. 18, 1977. Claim should be allowed for the dates of Feb. 21, 22, 23, 24, 25, 28, and March 1, 2, 3, 4, 7, 8, 9, 10 and 11, 1977, and
- (b) Mary Smith incumbent of position A-665, Asst. Supvr., rate \$65.98 per day should be allowed 8 hours at the pro rata rate of \$65.98 per day in addition to any other earnings allowed her because of this violation of the Clerks' Agreement, and
- (c) Mr. George Greenhill who is now working as an EXTRA CLERK who was the former incumbent of position A-626 before its abolishment on Feb. 18, 1977, should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings already allowed because of this violation of the BRAC agreement.

CLAIM NO. 2

- (a) The Carrier violated the BRAC Clerical Agreement, Rules 12, 18, 23, 24, 42, 43 and 47 and others when they allowed and/or permitted Mr. Thomas Webb to perform duties consisting of Station and Office timekeeping, assigned to position A-653 which was occupied by the incumbent Ms. Kathleen Kent prior to position A-653 being abolished on Feb. 18, 1977. Claim should be allowed for the dates of Feb. 21, 22, 23, 24, 25, 28 and March 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1977 and

- (b) Mr. Thomas Webb incumbent of position A-543, T & E Claims Clk., rate \$62.53 per day should be allowed 8 hours at the pro rata rate of \$62.74 per day in addition to any other earnings allowed him because of this violation of the Clerks' Agreement.
- (c) Ms. Kathleen Kent present incumbent of position A-16, Key Punch Operator, rate of \$52.60 per day former incumbent of position A-653 before its abolishment on Feb. 18, 1977 should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings allowed because of this violation of the BRAC agreement.

CLAIM NO. 3

- (a) The Carrier violated the BRAC General Agreement, Rules 12, 18, 23, 24, 42, 43, and 47 and others when they allowed and/or permitted Earl Sipes to perform duties consisting of Station & Office Timekeeper assigned to position A-612, which was occupied by the incumbent Mary Loris prior to position A-612 being abolished on Feb. 8, 1977. Claim should be allowed for the dates of Feb. 21, 22, 23, 24, 25, 28 and March 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1977. And is to continue until position A-612 Station Timekeeper is reestablished and
- (b) Earl Sipes incumbent of position A-204, Accountant, rate \$62.74 per day should be allowed 8 hours at the pro rata rate of \$62.74 per day in addition to any other earnings allowed him because of this violation of the Clerks' Agreement, and
- (c) Mary Loris present incumbent of position A-38, Key punch Operator, rate of \$52.60 per day former incumbent of position A-612 before its abolishment on Feb. 18, 1977 should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings already allowed her because of this violation of the BRAC Agreement.

CLAIM NO. 4

- (a) The Carrier violated the BRAC Clerical Agreement, Rules 12, 18, 23, 24, 42, 45 and 47 and others when they allowed and/or permitted Ms. Oleta Adams to perform duties consisting of Station and Office timekeeper assigned to position A-601, which was occupied by the incumbent Floretta Taylor prior to position A-601 being abolished on Feb. 18, 1977. Claim should be allowed for the dates of Feb. 21, 22, 23, 24, 25, 28, and March 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18, 1977.

- (b) Oleta Adams incumbent of position A-217, Accountant, rate \$62.74 per day, should be allowed 8 hours at the pro rata rate of \$62.74 per day in addition to any other earnings allowed her, because of this violation of the Clerks' Agreement.
- (c) Floretta Taylor, present incumbent of position A-136, Per Diem Clerk, Car Records, rate \$55.71 per day, former incumbent of position A-601 before its abolishment on Feb. 18, 1977, should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings already allowed her because of this violation of the BRAC Agreement.

CLAIM NO. 5

- (a) The Carrier violated the BRAC Clerical Agreement, Rules 12, 18, 23, 24, 42, 43 and 47 and others when they allowed and/or permitted Ms. Sara Gilbreath to perform duties consisting of Station and Office Timekeeper assigned to position A-609 which was occupied by the incumbent Ms. Eleanor Johnson prior to the position A-609 being abolished on Feb. 18, 1977. Claim should be allowed for the dates of Feb. 21, 22, 23, 24, 25, 28, and March 1, 2, 3, 4, 7, 8, 9, 14, 15, 16, 17 and 18, 1977. This claim is to continue until Position A-609 is reestablished, and
- (b) Sarah Gilbreath, incumbent of Position A-233, rate \$62.74 per day, should be allowed 8 hours at the pro rata rate of \$62.74 per day in addition to any other earnings already allowed her because of this violation of the Clerks' Agreement, and
- (c) Eleanor Johnson, present incumbent of position A-73, Key punch Operator with a rate of \$52.60 per day, former incumbent of position A-609 before its abolishment Feb. 8, 1977 should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings already allowed her because of this violation of the BRAC Agreement.

CLAIM NO. 6

- (a) The Carrier violated the BRAC Clerical Agreement, Rules 12, 18, 23, 24, 42, 43 and 47 and others when they allowed and/or permitted Mr. James P. Richardson to perform duties consisting of Station & Office timekeeper assigned to position A-626 which was occupied by the incumbent Mr. George Greenhill prior to position A-626 being abolished on Feb. 18, 1977. Claim should be allowed for the dates of March 14, 15, 16, 17, and 18, 1977. This claim is to continue until position of A-626 is reestablished and for every day that Mr. Richardson performs duties assigned to A-626, and

- (b) Mr. James R. Richardson incumbent of position A-81, Vacation Relief Clerk, rate \$62.74 per day should be allowed 8 hours at the pro rata rate of \$62.74 per day in addition to any other earnings allowed because of this violation of the BRAC Agreement, and
- (c) Mr. George Greenhill who is now working as a Extra Clerk former incumbent of position A-626 before its abolishment on Feb. 18, 1977 should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings already allowed because of this violation of the BRAC Agreement.

CLAIM NO. 7

- (a) The Carrier violated the BRAC Clerical Agreement, Rules 12, 18, 23, 24, 42, 43 and 47 and others when they allowed and/or permitted Ms. Mary Gutmann to perform duties consisting of Station & Office timekeeper, assigned to position A-604, which was occupied by the incumbent Ms. Anita Price prior to position A-604 being abolished on Feb. 18, 1977. Claim should be allowed for the dates of Feb. 21, 22, 23, 24, 25, 28 and March 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1977 and.
- (b) Ms. Mary Gutmann incumbent of position A-201, Accountant, rate \$62.74 per day should be allowed 8 hours at the pro rata rate of \$62.74 per day in addition to any other earnings allowed her because of this violation of the Clerks' Agreement, and
- (c) Ms. Anita Price present incumbent of position A-51, Key Punch Operator, rate \$52.60 per day former incumbent of position A-604 before its abolishment on Feb. 18, 1977, should now be allowed 8 hours at the pro rata rate of \$58.15 per day in addition to any other earnings already allowed her because of this violation of the BRAC Agreement.

OPINION OF BOARD: As a result of a reduction in the need for various types of Timekeeper positions caused by a business decline resulting from severe weather conditions in January-February, 1977, the six (6) positions which are involved in this dispute were abolished effective on February 18, 1977, by proper advance notice. These positions were subsequently reestablished effective March 21, 1977. The voluminous record which makes up the file in this case covers seven (7) separate claims involving the six (6) positions which were abolished during the period February 18 to March 21, 1977.

Petitioner contends and argues that the six positions were not abolished in fact because other regularly assigned clerical employees were required to perform the work of the abolished positions on a regular basis.

Carrier, on the other hand, argues that the work of the abolished positions which remained to be performed was properly assigned to other regularly assigned clerical positions at the location and that, as needed, other employees were used during their tour of duty to assist the employees to whom the remaining work was assigned as permitted by Rule 37 of the negotiated Agreement.

Rule 37 reads as follows:

"Absorbing Overtime

"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."

Based upon our review of the extensive record in this case and after consideration of the various contentions of the parties, we can only conclude that the action taken by the Carrier in this dispute is not prohibited by any Agreement provision to which we have been referred. Therefore, the claims must be and are denied.

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 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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

