

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30288  
Docket No. CL-30378  
94-3-92-3-161

The Third Division consisted of regular members and in addition Referee Gil Vernon when award was rendered.

(Transportation Communications  
(International Union  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc., (former  
( Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the  
Organization (GL-10670) that:

- (a) The Carrier violated the terms of the General Agreement and Memoranda thereto when on February 4, 5, 11, 12, 18, 19, 25, 26, March 4, 5, 11, 12, 18, 19, 25, 26, 1989, it failed and refused to utilize the services of Clerk J. E. Noel, ID 902393, on the Position of Assistant Chief Clerk, A-051: and,
- (b) The Carrier shall now arrange to allow Clerk Noel eight (8) hours pay at the punitive rate of \$118.96 per day for the above dates."

Findings:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The facts of this case are not in dispute. Claimant is the regularly assigned occupant of Assistant Chief Clerk Position A-051, at Queensgate Yard, Cincinnati, Ohio, assigned to work 8:00 A.M. to 5:00 P.M., Monday through Friday, with rest days Saturday and Sunday. On the various dates set forth in the Claim, the payroll duties normally and routinely performed by the Claimant during his workweek were assigned on the Claimant's rest days to the incumbent of Industrial Service Clerk Position A-057.

It stands without rebuttal that the former position of Payroll Clerk A-092 was abolished on December 30, 1988, and the payroll duties were added to the Claimant's position which is a five day assignment and performed by the Claimant. Subsequently, on February 4, 1989, the Carrier assigned the payroll duties of the Claimant's position on Saturday and Sunday to Industrial Service Clerk Position A-057 which is a seven day non-relief assignment with no past payroll duties.

Rule 35-Working Overtime states, in pertinent part:

"(b) Work on Unassigned Days. Where work is required by the Carrier to be performed on a day which is not part of any assignment, it will be performed by the regular employee . . . ."

The Board carefully reviewed the record of this case, including the Agreement language in question, as well as applicable Awards. We must conclude that given the language in question the Organization's position is more persuasive. In the instant case, the Carrier cannot overcome the fact that the Claimant's position is a five day assignment and when work is required on its rest days in accordance with Rule 35 it belongs to the regular incumbent. We are, however, in agreement with the Carrier that the punitive rate is not the appropriate compensation for work not performed. It is also clear that the work involved did not constitute a majority of the Claimant's position. Therefore, proper compensation for the violation is four hours at the straight time rate of pay for each date of violation.

#### AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.