

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(1) The Carrier violated rules of the Clerks' Agreement when it called Yard Clerk Geo. Montgomery, junior to other available regular assigned clerks, and that

"(2) D. O. Mikels, senior available yard clerk, be paid a call as provided for in Rule 32, of the present agreement."

EMPLOYES' STATEMENT OF FACTS: "Geo. E. Montgomery regular assigned yard-clerk, assigned hours:

11:00 A. M. to 8:00 P. M.
off 3:00 P. M. to 4:00 P. M. lunch.

"D. O. Mikels regular assigned yard-clerk, assigned hours:

12:00 Noon to 9:00 P. M.
off 3:30 P. M. to 4:30 P. M. lunch.

"On April 15, 1940, Geo. Montgomery, was called to work trains No. 58 in and 170 out.

"Clerk Montgomery was called to assist Clerk Bynum to work train No. 58 in and No. 170 out. Train No. 58 arrived at 9:00 A. M. Waybills delivered to Desk Clerk Bynum at 9:00 A. M.

"Yard-Clerk Bynum showed on delay report and switch-list time train No. 58 arrived as 9:00 A. M. in his handwriting.

"Yard-Clerk Bynum called from the waybills, to Montgomery the car number and destination, and Montgomery marked on the switch-list final destination of cars, which is shown as 9:00 A. M.

"After finishing report on these two trains, Yard-Clerk Montgomery left yard-office, accompanied by General Yard-Master Love, at 10:00 A. M.

Yard Clerk Montgomery, seniority date is July 22, 1929.

Yard Clerk Mikels, seniority date is August 30, 1928.

"Mr. Mikels turned in time slip No. 17, April 15, 1940, claiming 2 hours at time and one half rate, account not being called to work call 9:00 A. M. to 11:00 A. M.

tion was made from his pay for the time absent, and he was allowed pay, as stated, at overtime rate from 9:10 A. M. to 11:00 A. M., or the beginning of his regular shift.

"6. D. O. Mikels was regularly assigned as yard clerk at Muskogee yard, working from 12 Noon to 9:00 P. M., with one hour off for meal period. He has no seniority or other right to be exclusively used for the service performed in this case. On the day in question, he worked on his regular shift and was allowed eight hours' pay.

"7. The names of the clerks at Muskogee Station and Yard appeared on the seniority roster of January 1, 1940, in the following order:

1. J. S. Bynum	July 8, 1918
2. J. B. Spear	July 25, 1926
3. C. A. Malone	Aug. 16, 1926
4. D. O. Mikels	Aug. 30, 1928 (See note)
5. Geo. Montgomery	July 22, 1929 (See note)

Note: Although the roster indicates an older date for Mikels than Montgomery, the seniority of those employees as to each other is governed by the Third Division ruling in Award 515 which disposed of a seniority dispute between these two men; and which ruled that Montgomery had seniority over Mikels in the position then occupied."

POSITION OF CARRIER: "The employees in conferences have presented no basis upon which Mikels can properly claim the exclusive right to perform this or any other service. Mikels on the day in question worked his full assignment and was compensated therefor in accordance with the provisions of the agreement. Montgomery worked in advance of his regular assignment and was compensated on the basis provided by Rule 31 for such overtime. No other employee has any right to claim that he should have been used in place of Montgomery.

"There is no obligation, either by rule or practice, when it is necessary to require a regularly assigned employee to work overtime continuous with his regular work period, to assign such overtime work to some other employees. There is no seniority question involved. Overtime continuous with the regular work period covered by Rule 31 is not governed by seniority. The overtime rules are plain. But even if seniority had any bearing on this case, which it does not, the employees are in error in stating that Montgomery is junior to Mikels because that question, insofar as it affected the position occupied by Montgomery, was disposed of by Award 515 of the Third Division, covering a seniority dispute between Montgomery and Mikels, and which states in the next to the last paragraph of the 'Opinion of Board':

'In the opinion of the Board the supplementary agreement of May 31, 1934 superseded Rule 4 of the agreement of June 14, 1921 insofar as it affected the seniority rights of the individuals named, and gave Mr. Montgomery seniority rights in the position he then occupied, or in any other yard clerk position he might occupy while there were four yard clerk positions existent.'

"There is no merit in the claim and it should be denied.

"Since this is an ex parte case, this submission has been prepared without seeing the employees' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission."

OPINION OF BOARD: The facts of record disclose that Geo. E. Montgomery is a regularly assigned yard clerk, with assigned hours 11:00 A. M. to 8:00 P. M., with one hour off for lunch between 3:00 P. M. and 4:00 P. M.; that on April 15, 1940, Montgomery was given a call in advance of

his regularly assigned reporting time of 11:00 A. M.; that the overtime slip turned in by him shows that he reported on the call and worked from 9:10 A. M. to 11:00 A. M., continuing thereafter on his regular assignment, completing same and going off duty at 8:00 P. M., for which he was allowed eight hours at pro rata rate for his regular assignment, 11:00 A. M. to 8:00 P. M., and one hour and fifty minutes at punitive rate for the time worked in advance of and continuous with his regular work period, as provided for in Rule 31 and letter of understanding bearing on this subject dated June 26, 1936, addressed to the General Chairman by the Vice President of the carrier. The action of the carrier being in conformity with the provisions of the Agreement and the letter of understanding, claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 action of the carrier being in conformity with the provisions of the Agreement and the letter of undersanding of June 26, 1936, claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1941.