

**Award No. 1646**  
**Docket No. CL-1604**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Bruce Blake, Referee

**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

(Guy A. Thompson, Trustee)

**STATEMENT OF CLAIM:** "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad Company, that the Carrier violated the Clerks' Agreement:

(1) When on August 25th, 1940, it failed to call Clerk, C. A. North to perform service at Van Buren, Ark. Yard beginning at 1:00 A. M. and ending at 9:00 A. M., which service was in addition to the regular assigned clerical force, instead of calling V. Crawley, who held no seniority on any seniority roster covered by the agreement entitling him to perform said work.

(2) That Clerk C. A. North be paid for eight (8) hours punitive overtime at the basic rate (4.79 per day) or 90 cents per hour—\$7.20 for August 25th, 1940."

**EMPLOYES' STATEMENT OF FACTS:** "The regularly assigned station force at Van Buren, Ark. Yard, subject to the scope and operation of the clerks' agreement on August 25th, 1940, was:

Classification of Position	Name of Occupant	Rate of Pay	Assigned Hours	Days Per Week
Chief Yard Clerk	Hampton, H. J.	\$5.69	8:00 A. M. to 4:00 P. M.	7
Yard Clerk	Wilkerson, J. E.	\$5.04	8:00 A. M. to 4:00 P. M.	6
Yard Clerk	Halley, A. S.	\$4.79	4:00 P. M. to 12:00 M.	6
Yard Clerk	Amerine, E. H.	\$5.04	4:00 P. M. to 12:00 M.	7
Yard Clerk	Hoffstetter, J. W.	\$5.04	12:00 M. to 8:00 A. M.	7
Yard Clerk	North, C. A.	\$4.79	12:00 M. to 8:00 A. M.	6

"Prior to March 10th, 1940, the position of yard clerk, occupied by Clerk, C. A. North at Van Buren Yard was assigned to seven (7) days per week.

"On March 7th, 1940, General Yardmaster, Mr. W. D. Badgett notified Superintendent, Mr. E. Sullivan, copy attached hereto and made a part hereof and designated as Exhibit (a), as follows:

'Effective March 9th, 1940, outside clerk, C. A. North 12:01 A. M. to 8:01 A. M., seven day assignment changed to six day assignment not working Sunday morning.'

loughed from class 1 and working in class 2 at Van Buren, nor at any other point adjacent thereto who could have been called for this extra work that arose after midnight on Sunday morning, August 25, 1940.

"As stated by the Carrier in its decision to General Chairman Thomas on February 25, 1941 there is no rule in our wage schedule that would support the Employees' claim that Mr. North be paid eight hours pay at time and one-half rate account not called for this extra work on Sunday morning, August 25, 1940, and in the absence of a rule we feel that your Honorable Board should properly deny the Employees' claim."

**OPINION OF BOARD:** The facts are not in dispute. The work performed by Crawley was within the scope of the agreement. Crawley held no seniority rights under the agreement.

We do not understand the Carrier to deny that, in assigning Crawley to the work, it violated Rule 19 of the agreement as interpreted by Labor Bulletin No. 43-B. In any event, the violation is clear.

The Carrier contends, however, that, under the rule as interpreted North was not entitled to be called. The essence of the claim is by the Organization for violation of the agreement. The claim for the penalty on behalf of North is merely an incident. That the claim might have been urged in behalf of others having, as between themselves and North, a prior right to make it, is of no concern to the Carrier. Awards 571, 1058, and 1605. That does not relieve it of the obligation to pay the rate stipulated for a call. The others are making no claim; and if they should the Carrier would not be required to pay more than once.

**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 employe involved in this dispute are respectively carrier and employe 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 carrier violated the agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1941.