

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

(Scott M. Loftin and John W. Martin, Trustees)

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

Messenger J. H. Sanders, a Group 2 employe in the Jacksonville Freight Agency, be paid a three-hour call on June 1st, 8th, 15th, 22nd, 29th, July 4th, 6th, 13th, 20th, 27th and August 3rd, 1941, because of a Group 1 employe being called and performing duties on those Sundays and holiday which are regularly assigned to Messenger Sanders.

EMPLOYES' STATEMENT OF FACTS: J. H. Sanders was assigned by bulletin dated September 9, 1940 to permanent position of Office Messenger, Jacksonville Freight Agency. Carrier's Bulletin No. 40-C1, dated August 28, 1940, advertising this position to which Sanders was assigned, specifies the following duties:

"The duties of this position will consist of carrying bills of lading, waybills, etc., between bill desk and warehouse, placing carbon and setting up sets of manibills for bill desk, separating same, handling valuables for waybills, etc., and listing same for mailing, and handling messages and letters as may be necessary."

It will be noted that the regular assigned duties of Messenger Sanders include pulling carbon, separating waybills, etc. Sanders was not called or permitted to work on the dates shown in Statement of Claim, but the work was performed by a Group 1 stenographer-clerk on dates in question.

POSITION OF EMPLOYES: The following rule is quoted by the employes in support of this claim:

Rule 45

"(a) Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis, at the rate of time and one-half.

"(b) In making overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary will be given preference, when practicable. This principle will also apply when making extra time on Sundays or Holidays."

tomarily performed on other days by a lower rated employe within the scope of the same agreement. The claim should be denied for want of merit.

OPINION OF BOARD: Since the controlling facts are not in dispute, they will not be restated.

The question for determination is, do the rules of the agreement prohibit a stenographer-clerk (a Group 1 employe) from pulling carbon from, and separating forms after he has completed typing necessary data on such forms on holidays and Sundays, when such work was done by the claimant employe (a Group 2 employe) for six days in the week?

Rule 45, Section (b) reads:

"In making overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary will be given preference, when practicable. This principle will also apply when making extra time on Sundays and Holidays."

The phrase "when practicable" means when possible and not when desirable.

The record shows that had the work in question been done during the six week days, the claimant would have done this work; and that the claimant employe was not called or given an opportunity to perform this work on the days in question as he should have been.

On authority of Awards 68, 420, 572, and 1630, the Board holds that rule 45 (b) was violated in this instance.

The carrier makes the further argument that this work was incidental to the work performed by Wood as stenographer-clerk. In many instances the work in question would be identical to the work of a stenographer, but not under the facts in this case. Here this work was definitely assigned to a messenger, a Group 2 employe.

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 carrier violated the current agreement as contended by petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1942.