

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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 Employees on the Missouri Pacific Railroad that the Carrier violated the Clerks' Agreement:

1. When it notified the Reclaim Clerk, Mr. Sam Zweiback at Omaha, Nebraska, to work overtime, 5:00 P. M. until 11:00 P. M. as Telephone Switchboard Operator, on January 4, 1944, and failed to call the Night Bill Clerk, Mr. R. W. Wright, incumbent of work of operating the telephone switchboard in conjunction with his duties of Night Bill Clerk, each night, 11:00 P. M. to 7:00 A. M.;
2. That Clerk R. W. Wright shall be compensated for the period 5:00 P. M. to 11:00 P. M., six hours, at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad at its Omaha, Nebraska Local Freight Station has two regularly established telephone switchboard operator positions:

1. 7:00 A. M. to 3:00 P. M., rate \$5.43 per day;
2. Telephone Switchboard Operator—Caller, 3:00 P. M. to 11:00 P. M., rate \$5.43 per day.

Note: The classification of Telephone Switchboard Operator (PBX Operator—Caller) is the official payroll classification, whether or not the employee actually performs calling work).

Telephone Switchboard Operators are listed in Group 1 of Rule 1 of the Clerks' Agreement on the Missouri Pacific Railroad.

In addition to the two positions classified, listed and rated as set forth herein, the Night Bill Clerk, Mr. R. W. Wright, rated \$7.06 per day, is required as a part of his ordinary, normal and regularly assigned duties to operate the switchboard during the hours of assignment, 11:00 P. M. to 7:00 A. M.

On January 4, 1944, Miss Blanche Stoddard, regularly assigned to position of telephone switchboard operator (PBX Operator—Caller) 3:00 P. M. until 11:00 P. M., notified the Agent's office at 2:00 P. M. that she was ill and could not report for duty on her position that day.

Mrs. Christine Christenson was, on the date in question, occupying the Telephone Switchboard Operator position 7:00 A. M. to 3:00 P. M. and on

As stated by the Carrier in its Statement of Facts, there was employed in the Omaha freight station as of the date this case arose some 25 employees occupying various positions covered by the scope rule of the agreement with the Clerks' Organization effective July 1, 1943. The hours of service, payroll classification and seniority dates of these employees are tabulated on a statement identified as Carrier's Exhibit No. 3. It will be observed that the senior employee in the office is Mr. Secord, seniority dating June 1, 1905, and the junior employee (clerical worker) was A. L. Christensen, seniority dating June 21, 1939.

There is no rule in the agreement with the Clerks' Organization requiring the observance of seniority of employees in the filling of vacancies caused by the absence of regular assigned employees who may lay off account of illness, as happened in this particular case. There is but one rule in the agreement governing the assignment of employees to work overtime and that is the second paragraph of Rule 25, Section (b), reading:

"To avoid discrimination as between employees to be used on authorized overtime work, the incumbents of positions which require overtime hours will be used if possible."

This rule is not applicable to the instant case.

There is also shown, to support the Carrier's contentions, Carrier's Exhibit No. 4—photostat of the Omaha station first period January, 1944 payrolls, and Carrier's Exhibit No. 5—employees' seniority roster for the Omaha-Northern Kansas Division which includes the Omaha station forces, year 1944.

Carrier feels that the rules of the working agreement with the Clerks' Organization effective July 1, 1943 do not support the Employees' claim and that it should be properly denied by your Honorable Board.

OPINION OF BOARD: There are two regularly classified and rated Switchboard Operators at the Carrier's local freight office at Omaha. The hours of the first trick are from 7:00 A. M. to 3:00 P. M. and those of the second trick from 3:00 P. M. to 11:00 P. M. In addition, the Claimant, who was Night Bill Clerk, was regularly assigned to operate the switchboard from 11:00 P. M. to 7:00 A. M., and normally devoted about two hours daily to that activity.

On January 4, 1944, the second trick operator notified the office that she would not report for work at 3:00 P. M. on account of illness. There was no furloughed or qualified extra employee available and the Carrier assigned the first trick operator to the vacancy. This employee asked to be relieved at 5:00 P. M., whereupon the Carrier then filled the position with a Reclaim Clerk, with regular assigned hours from 8:00 A. M. to 5:00 P. M., who had nothing to do with the operation of the switchboard. The Petitioner says that the Claimant was senior and available for service and should have been assigned, instead of the Reclaim Clerk, by reason of that part of Rule 25 (b) of the effective Agreement of July 1, 1943, which reads:

"To avoid discrimination as between employees to be used on authorized overtime work the incumbents of positions which require overtime hours will be used if possible."

The Carrier urges that the above Rule has no proper application to this case because, under the facts, the work here involved was regular work on a vacant position, and not overtime on the position of the absent telephone operator. It is suggested that the phrase, "authorized overtime work," as used in Rule 25 (b), merely assures to incumbents of regular positions the right to perform any overtime that may be assigned to **their** positions and has no reference to overtime that may be performed on such positions by others. In support of the contention, the Carrier has called our attention to a Memorandum of Understanding, dated July 20, 1943, the title of which discloses that it was designed to apply exclusively to the Accounting Department of the General Offices.

To restrict Rule 25 (b) to the narrow meaning urged by the Carrier would, in our opinion, unduly limit its application. Manifestly, the second trick telephone operator was entitled to no guaranty of the right to perform overtime on her own position during the period she was absent therefrom on account of illness, since the Carrier had a right to provide uninterrupted telephone service. Likewise, it may be assumed, we think, that if the parties had intended that Rule 25 (b) should have the limited application urged by the Carrier, they would not have restricted the Memorandum of July 20, 1943 to the Accounting Department of the General Offices. It must be concluded, therefore, that the Carrier's action in the premises was a prohibited discrimination against the Claimant.

There is no support for the contentions in behalf of Carrier in reference to Award 2618, which involved a very narrow question. The disposition of that case turned upon the meaning of a rule relating to overtime worked by regularly assigned employees before or after their assigned hours, and to extra work required to be performed on Sundays and holidays. By express terms the opinion of the Board was limited to the particular facts and circumstances there presented.

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 Employees involved 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 Carrier violated the Agreement as charged in the claim.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of February, 1945.