

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**

**DENVER & RIO GRANDE WESTERN RAILROAD COMPANY**  
(Wilson McCarthy and Henry Swan, Trustees)

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Mr. J. D. Gardner, Enginehouse Clerk, Helper, Utah, be compensated eight hours per day at time and one-half rate of his regular assigned position (\$6.78 per day) in addition to day's pay allowed for each day December 17, 18, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31, 1943, and January 3, 4 and 5, 1944, account not being permitted to work his regular assignment when required to work outside his regular assignment.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. J. D. Gardner was, and is, assigned to position of Enginehouse Clerk, Helper, Utah, with hours 8:00 A. M. to 5:00 P. M., one hour meal period. This assignment was made under Master Mechanic's Bulletin No. 13-A, dated August 5, 1943. He was entitled to hold this position on December 17, 1943 when he was arbitrarily removed from his regular assignment and assigned hours 12:00 midnight to 8:00 A. M.

The organization protested this irregularity and carried the case to the court of last resort on the property. Failing settlement, the organization requested the Carrier to join with them in submission of the dispute to Third Division, National Railroad Adjustment Board.

Under date of June 14, 1944 the organization received the following letter from the Assistant General Manager (the court of last resort on the property):

"Referring to your letter of June 13th with further reference to the claim of Enginehouse Clerk J. D. Gardner, Helper, Utah.

"Regret I cannot consistently join you in submission of this case to the Third Division of the National Railroad Adjustment Board.

Therefore, this case is being submitted ex-parte.

**POSITION OF EMPLOYEES:** Mr. J. D. Gardner, Enginehouse Clerk, Helper, Utah, with assigned hours 8:00 A. M. to 5:00 P. M., was assigned to that position by bulletin and it was his position by virtue of such assignment. And he could only be displaced from that position by being bumped by a senior employe whose position had been abolished.

Rule 3 of the Clerks' Agreement reads, in part, as follows:

"Seniority begins at the time an employe is assigned to a position in accordance with this agreement, in the seniority district and class where assigned."

The rate of pay of the engine dispatcher position to which Claimant was temporarily assigned, it is conceded, was a lower-rated position than the enginehouse clerk's position. In accord with the first paragraph of Rule 50 of Article XI, reading:

"Employees temporarily or permanently assigned to higher-rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower-rated positions shall not have their rates reduced."

Claimant Gardner was paid at enginehouse clerk's rate.

What, then, of the so-called inconvenient hours of the temporary assignment, the hours of the assignment that Claimant temporarily filled being from midnight to 8:00 A. M.? Carrier does not deny that most employees prefer to work daylight hours or that previous to the temporary assignment Claimant enjoyed a daylight assignment. Except, then, for the change in Claimant's hours of service he was not discommoded.

How does Carrier meet this charge of inconvenience that Claimant alleges he suffered? In the first place, Carrier points out that it is obligated to grant reasonable leaves of absence and that Mrs. Pettey's request to visit her service husband who was about to embark for overseas duty was a compliance with the meaning of Rule 30 (d). In the second place, Carrier points out that Rules 11 (b) and 50 contemplate that employees shall, when the needs of the service require, be temporarily assigned to higher-rated positions or lower-rated positions, the rate of pay being that of the higher-rated position in all cases.

#### CONCLUSION

Carrier has shown that the circumstances upon which the request for a leave of absence was granted were of such nature that it could not in good conscience refuse and contend that it acted reasonably; and that Rules 11 (b) and 50, when construed together, contemplate that Carrier shall have the right to call upon employees to fill lower-rated positions subject only to the condition that the employee so assigned shall be paid at the higher-rated position. A denial award is, therefore, Carrier believes, in order.

**OPINION OF BOARD:** On December 15, 1943, the Carrier's Third Trick Engine Dispatcher at Helper, Utah, hours 12:00 midnight to 8:00 A. M., rate \$5.67, requested and was granted a 20-day leave of absence, effective December 17, to visit her husband who was a member of the Armed Forces, about to be sent overseas. The Claimant, a regular assigned Enginehouse Clerk, hours 8:00 A. M. to 5:00 P. M., rate \$6.06, was removed from his position and required to fill that of said Engine Dispatcher during her absence, at his pro rata rate. The First and Second Trick Engine Dispatchers were qualified and available to split and fill the vacated Third Trick position on an overtime basis.

The Carrier is not to be censured for granting the leave of absence and we need not decide whether it would have been justified in refusing so to do. Our only concern is with what was done in filling the temporary vacancy thus created.

The Petitioner relies upon Rule 39 (a): "Employees will not be required to suspend work during regular hours to absorb overtime." Carrier leans upon Rules 11 (b) and 50, and says that Rule 39 (a) was not violated by taking the Claimant from his regular position and placing him in another for a continuous period of 20 days, at the higher rate; that the purpose of Rule 39 (a) is to prevent the suspension of an employee from his own position during the regular hours thereof or before quitting time, and to prevent laying an employee off in advance of his relief day and requiring him to work thereon, to avoid payment on an overtime basis after his regular hours or on his relief days. This, in our opinion, would unduly restrict the proper applica-

tion of Rule 39 (a) by, in effect, adding to its clear and specific language the words, "on his own position." It is beyond the purview of this Board to limit or expand the meaning of contractual rules that are free from ambiguity.

Rule 11 (b) is a seniority rule, and Rule 50 is a rating provision. Both of said Rules are primarily for the protection of the employes, and neither may be construed as, in any manner, relaxing the requirements of 39 (a).

We may not concern ourselves with the Carrier's motives, either in granting the leave of absence or in assigning the Claimant to the resulting temporary vacancy. In dealing with alleged violations of agreements we must ascribe to the parties involved a purpose to accomplish the natural and logical consequences of their voluntary acts. This places the Carrier in the position of having required the Claimant to suspend work during regular hours to absorb overtime. For this violation of the Agreement the Carrier must be penalized, but we think that end will be accomplished by compensating the Claimant, additionally, for the days he was deprived of work on his regularly assigned position, at the prevailing pro rata rate applicable thereto.

**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 Agreement.

#### AWARD

Claim sustained as indicated in the concluding sentence of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.