

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henry J. Tilford, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that Harry J. Alders, extra Gang Timekeeper, Western Division, shall be reimbursed for all losses sustained account of action of the Railroad in holding him on position of Transportation Clerk, Superintendent's Office, Sacramento, longer than necessary to arrange transfer to position of timekeeper on extra Gang No. 2.

EMPLOYES' STATEMENT OF FACTS: Through Western Division Clerks' Circular No. 110-43 of June 24, 1943 Harry J. Alders was assigned to position of Timekeeper on extra Gang No. 2. He was held on position of Transportation Clerk until July 24, 1943 which was longer than necessary to arrange transfer to position bid in.

At the time in question the position of Transportation Clerk was rated at \$7.07 per day. The position of extra Gang Timekeeper was rated at \$6.04 per day. However, the timekeeper on Extra Gang No. 2 worked considerable overtime, resulting in his earnings from salary paid by the Railroad being greater than those earned by Transportation Clerk. In addition, he was furnished room and board, and participated in commissions resulting from sale of articles in behalf of commissary contractor.

Alders has previously been reimbursed in the amount of difference in salary paid by the Railroad on Transportation Clerk at Sacramento and that paid Timekeeper on Extra Gang No. 2.

POSITION OF EMPLOYES: The following rules are cited from agreement bearing effective date of October 1, 1930:

"Rule 23. Employees not assigned regularly to road service, who are required temporarily to perform service away from their headquarters which necessitates their traveling, shall be allowed necessary expenses while away from their headquarters, and shall be paid pro rata for any additional time required in traveling to and from the temporary assignment, except that where lodging is furnished or paid for by the Railroad, no additional compensation shall be allowed unless actually required to perform service in excess of eight consecutive hours exclusive of the meal period, or held waiting after assigned hours.

signed to the position of Extra Gang Timekeeper (June 24, 1943) his former position of Transportation Clerk was advertised as a vacancy. No bids were received and we endeavored unsuccessfully to find an occupant for the position until July 25, 1943 when, in desperation, we placed on the job a female stenographer with no clerical experience whatever and permitted Alders to take over the timekeeping position on July 26, 1943. The lack of clerical experience prevented the stenographer from satisfactorily handling the job and eventually it was necessary to disqualify her. November 1, 1943 Alders was displaced from the position of Extra Gang Timekeeper by a senior employe and instead of displacing a junior extra gang timekeeper as originally contemplated by him, Alders asked to be permitted to perform vacation relief work for the clerks in the Superintendent's office, which he was permitted to do and November 27, 1943 he bid back into the position of Transportation Clerk which had again been advertised.

Carrier states that the request of the employes should be declined for the following reasons:

- (1) Rule 23 is not applicable to the dispute.
- (2) Rule 31 was not violated because Alders was not held "on position occupied longer than necessary to arrange transfer to position bid in."
- (3) There is no schedule provision requiring the boarding contractor to make any payment to a timekeeper either in board or money. As a matter of fact, the schedule makes no provision whatever for a condition of this kind.
- (4) "Full Wage" within the intent of the second paragraph of Rule 31 means **only** the wage specified in the Clerks' Circular. It does not include overtime; nor allowance of any character whatsoever from a contractor or other outside source.

OPINION OF BOARD: Applying the principles enunciated in Award 2881, Docket CL-2892, to the facts of the confronting case, it is apparent that the Carrier has not sustained its position that Alders was not held on the position of Transportation Clerk, Superintendent's Office, Sacramento, longer than necessary to arrange his transfer to the position of Timekeeper on Extra Gang No. 2, which had been assigned him. This view is strengthened by the fact that Carrier voluntarily reimbursed Alders for all loss of earnings.

The only question left for decision is whether Alders should be reimbursed for the amount expended by him for room and board in Sacramento pending the transfer, amounting to \$103.85, plus the commissions which he would have received on clothing and other articles sold on behalf of the Commissary Contractor.

In support of its contentions Petitioner cites Rules 23 and 31 and insists that the term "full wage" as used in the second paragraph of Rule 31 embraces the item above referred to. Especial emphasis is placed upon the word "full," the argument being that unless such board and commissions were intended to be included that word would have been omitted from the rule. Asserting that the commissions referred to were recognized by the Carrier as constituting additional compensation for required service, Petitioner files a letter from the Office of the Carrier's Vice President and General Manager dated September 23, 1930, reading as follows:

"CASE NO. 635—1929 (System)

Mr. H. J. Beem
Mr. T. E. Coyle
Mr. J. H. Leary.

Referring to attached copies of correspondence, which are self-explanatory:

Please see that all concerned are advised of this more liberal allowance by the M. C. Threlkeld Commissary, effective Oct. 1, 1940 (1930).

Impress upon timekeepers that the wages paid them by the Railroad Company include services required in connection with the Commissary Department and that these concessions are voluntary gratuities on the part of Mr. Threlkeld.

Where timekeepers are required to sell such articles of merchandise as gloves, overalls, tobacco, etc., to employees, it is my understanding the Threlkeld Company will allow them an additional 7½ per cent commission for such particular service.

Please acknowledge receipt.

H. W. FORMAN."

It should be noted, however, that the commissions allowed on sales of clothing and other articles are referred to in the quoted letter of September 23, 1930, as "voluntary gratuities" on the part of the Commissary Contractor.

Moreover, as stated by the Carrier in its Submission,

"There is nothing in the schedule requiring the furnishing of board nor the assignment of overtime. Also unlike the circumstances in your Awards Nos. 1123 and 1439 cited by employees, the schedule is silent with respect to any allowance either in money or board which might be made by a boarding contractor to a timekeeper. This feature is purely a prerogative of the boarding contractor and is not a part of the current schedule even by implication.

Rule 23 is not pertinent to the issue here involved. It provides for the payment of traveling expenses. Alders was not traveling. He was being held on the position occupied before being transferred to the position bid in."

To the Petitioner's contention that the term "full wage," as used in the second paragraph of Rule 31, was intended to embrace expenses for board and lodging which he would have spared and commissions which he would have received from a person other than the Carrier, had the transfer been made promptly, the statement in the Carrier's Submission heretofore quoted is, in our opinion, a sufficient answer. The Carrier's suggested explanation of the use of the word "full" in the rule referred to is that it was intended to insure that the wages required to be paid an employee pending his transfer to a bid in position should include overtime, and this explanation we think is a more logical one.

The precedents cited by the Petitioner do not appear to be controlling, and this is impliedly conceded by the Petitioner in predicating its claim largely upon the requirements of equity. To penalize the Carrier to the extent that the construction of the rule contended for by Petitioner would penalize it would not only be harsh, but would expose it to claims the amount of which it could not reasonably anticipate.

On the whole we are of the opinion that in the absence of an explicit rule imposing such a burden upon the Carrier, the 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 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 in holding Alders longer than necessary to arrange transfer to the position bid in.

AWARD

Since Alders has been compensated for actual wage loss, the claim for other alleged loss is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of April, 1945.