

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 that S. W. Cooper, incumbent of Stenographer-Clerk in Dispatcher's Office, Sacramento, with hours 4:00 P. M. to 12:00 midnight, shall be paid at the rate of time and one-half for all service performed on November 5, 1942.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 5, 1942, S. W. Cooper was assigned to position of Stenographer-Clerk, Dispatcher's Office in Sacramento with hours 5:00 P. M. to 1:00 A. M. Under date of November 4, 1942, Superintendent G. W. Curtis issued the following notice:

"Effective November 5th, hours of your positions as Stenographer-Clerk in Dispatcher's Office in Sacramento will be 8:00 A. M. to 4:00 P. M. and 4:00 P. M. to 12:00 Midnight instead of 8:00 A. M. to 5:00 P. M. and 5:00 P. M. to 1:00 A. M."

The above quoted notice was addressed to incumbents of positions of Stenographer-Clerk in Dispatcher's Office at Sacramento. Cooper was paid at straight time rate for work performed on November 5, 1942.

POSITION OF EMPLOYEES: The following rules are cited from the agreement effective October 1, 1930:

"Rule 14. Regular assignments shall have a fixed starting time, and the starting time shall not be changed without at least 36 hours' notice to the employees affected.

"When the established starting time of a regular position is changed more than one hour for more than fifteen consecutive days, the employees affected may exercise their seniority rights to any position held by a junior employe, within ten days thereafter, upon 48 hours' advance notice. Other employees affected may exercise their seniority in the same manner."

"Rule 20. Except as provided otherwise in these rules, time in excess of eight hours, exclusive of the meal period, on any day shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights from one

not be penalized in connection with seniority moves. It was necessary, in order for Cooper to protect his seniority, for him to work the changed hours. Even if it had not been a seniority move he did not work more than one hour in excess of 8 in any 24 hour period and even in instances wherein he would have been entitled to punitive rate he would not have been entitled to more than 1 hour at time and one-half. In this instance, he is not entitled to any compensation at the punitive rate.

OPINION OF BOARD: The controlling facts are: On November 5, 1942, S. W. Cooper held the regularly assigned position of Stenographer-Clerk, Dispatcher's Office, Sacramento, with working hours from 5:00 P. M. to 1:00 A. M. On November 4, a bulletin was issued changing his regularly assigned hours, effective November 5, to 4:00 P. M. to Midnight, of which change Cooper had been verbally notified on November 3, and the change in assigned hours resulted in Cooper working one hour in excess of eight in a 24-hour period on November 5, between 4:00 P. M. and 5:00 P. M.

The Carrier makes the same defense in the confronting case as it did in the companion case, Docket No. CL-2899, Award 2887, and in addition thereto cites Rule 14, reading as follows:

"Regular assignments shall have a fixed starting time, and the starting time shall not be changed without at least 36 hours' notice to the employees affected.

"When the established starting time of a regular position is changed more than one hour for more than fifteen consecutive days, the employees affected may exercise their seniority rights to any position held by a junior employee within ten days thereafter, upon 48 hours' advance notice. Other employees affected may exercise their seniority in the same manner."

It seems to us apparent that Rule 14 was not intended to modify Rule 20 and that it has no such effect. See Award 2030.

Other arguments of the Carrier have been answered in the companion case referred to, and for the reasons stated in that Award, the claim in the instant case should be sustained to the extent of the one hour as in Award 2887.

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 contended by the Petitioner.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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