

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

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

- (1) That the Carrier violated, and continues to violate, the Clerks' schedule by refusing to allow Mrs. Lorraine Towner to occupy her regularly assigned position of Key Punch Operator, General Office, Denver, Colorado and that Mrs. Towner be compensated for two days lost account not allowed to return to her position after sick leave until she had received a release from a company doctor.
- (2) That Mrs. Towner be compensated the difference between what she received on the position she was placed on upon her return from sick leave and what she would have earned in overtime hours had she been allowed to return to her regular position.
- (3) That the occupant, or occupants, of the position from which Mrs. Towner was removed be compensated at the proper rate of the position, or, at the rate of \$6.22 per day.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Lorraine Towner, Key Punch Operator, with seniority date of March 9, 1937, in the Consolidated Machine Bureau, Denver General Office, was granted sick leave July 26, 1943 and returned to work September 21, 1943. Upon reporting for work she was notified by her superior officer that she could not return to work until she had secured release from a company doctor. Mrs. Towner secured this release, but was caused the loss of two days' work and pay on account of this action by the Carrier.

It is not the practice, nor has it ever been the practice, for an employee returning from sick leave of less than 90 days to be required to furnish a release from a company doctor or to undergo a physical examination.

This case was handled up to the court of last resort on the property and no agreement being reached, the organization requested the Carrier to join with them in submission to the Third Division, National Railroad Adjustment Board. Under date of May 9, 1944, the representative of the employees received the following letter from the representative of the Carrier:

Particular attention of the Board is directed to the following paragraph appearing in both the agreement of March 1, 1939, and the agreement of June 2, 1941:

"The Management will be permitted to assign stenographic, typing, computing, and key punch work, regardless of character, to any employe in the district assigned to and capable of performing such work."

The personnel of the Consolidated Bureau now consists of some 53 female employes as follows:

1	Supervisor
18	Stenographers
2	Typists
23	Comptometer Operators
7	Key Punch Operators
1	Posting Machine Operator
1	Messenger
53	

At present the rates for key punch operators range as follows:

1	@	\$6.47
1	@	6.22
1	@	6.12
1	@	5.97

Actual operations since establishment of the Bureau in 1939 have resulted in the senior employes being given the highest rates in their particular group, that is, whether in the stenographic group, computing group or key punch group. It will be noted from the above there are at present 7 key punch operators in the department, at four different rates ranging from \$5.97 to \$6.47 per day, and it is permissible under the Memorandum of Agreement of June 2, 1941, to assign key punch work, regardless of character, to any operation in the district. Any charge that the Carrier could not assign the Claimant, or any other operator, to any type of key punch work in the department is without foundation.

Concerning overtime hours it is opinion of the Carrier that Claimant Towner has been permitted to work all the overtime she wished to work. In support of this statement, attached as Carrier's Exhibit A is letter dated July 16, 1943, from Mr. J. L. Pearce, Auditor of Disbursements, to Mr. G. W. Freeland, Local Chairman; and as Carrier's Exhibit B, Local Chairman Freeland's letter of August 13, 1943, to the General Auditor, Mr. T. A. Thompson. You will note from Mr. Freeland's letter of August 13th, it is admitted that Claimant Towner did not wish to work overtime. A check of overtime worked by key punch operators in the Consolidated Machine Bureau from October 1, 1943, to November 1, 1944, shows that an average of 12 hours' overtime per month was worked per key punch operators position, while Claimant Towner worked an average of 9 hours per month overtime during this same period.

OPINION OF BOARD: This claim involves the same issues and contentions, and the parties so agree, and similar facts as are found in the claim under Docket No. CL-2846, Award No. 2893.

Employe was absent on account of physical disability for the same period as the employe in the other case. On her return she was also assigned work other than she had performed before going on leave. She was also kept out of service until she was given a physical examination by the Company doctor. While she was away from her regular position the occupant of her position was paid less than the rate which had been paid employe.

For the reasons stated in the other award employe is entitled to be assigned the same work upon her return as she had performed before she left; she is entitled to be compensated for the two days she lost because of the requirement of a physical examination; the occupant (or occupants) of her position for the period employe did not fill it is entitled to the difference in compensation between what was received and the rate of \$6.22 per day.

This claim has an additional item which we did not have in the other case, Employe is seeking compensation for the difference between what she received from the position she was assigned to upon her return and what she would have earned in overtime hours had she been returned to her former position. Inasmuch as we have ruled employe is entitled to resume her former position, she is entitled to recover on this item of the claim as well.

The claim should be sustained in its entirety.

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.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1945.