

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

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

(a) The Carrier violated rules of the Clerks' Agreement when it refused and continues to refuse to compensate Julia Tompkins for eight (8) hours (less compensation already received) for Saturday, February 6, 1944, and each subsequent Saturday she was allowed less than eight (8) hours' pay.

(b) Carrier now be required to compensate Julia Tompkins for full eight (8) hours (less compensation already received) for Saturday, February 6, 1944, and each subsequent Saturday she was allowed less than eight (8) hours' pay.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The Claimant involved in this instant claim is covered by that Agreement.

The Claimant herein performed service as a Comptometer Operator in the Timekeeping Department of the Western Division of the Carrier, located at Oakland, California. Her work consists of assisting in preparing the payrolls which are issued twice monthly, necessitating that she work from the first of each month to approximately the eighth thereof, and from the Sixteenth to approximately the Twenty-Fourth of each month. For this reason, Claimant and others used on the same basis are commonly referred to as part-time employees.

The assigned working hours of Claimant were and are 8:15 A. M. to 5:00 P. M., including a 45-minute meal period.

On Saturday, February 6, 1944, and on subsequent Saturdays, Carrier released Claimant at 12:55 P. M. and paid her only for actual time worked.

This instant claim was instituted in a letter dated August 28, 1945, addressed by Acting Division Chairman to Carrier's Division Superintendent; the letter reads as follows:

Mr. E. D. Moody,
Supt. S. P. Co.
Oakland Pier, California.

"File 2334
224 Blake Block
Oakland, California
August 28, 1945

Dear Sir:

Claim is herewith presented in behalf of Julia Tompkins, Comptometer Operator, Timekeeping Bureau, for eight hours pay

CONCLUSION: The carrier submits that it has conclusively established that the claim in this docket is not supported by Rule 9 of the current agreement or any other rule of the current agreement and therefore being without basis and should be denied.

OPINION OF BOARD: The claim involved in this dispute was first presented to the Carrier August 28, 1945. It is for eight hours pay (less compensation already received) for Saturday, February 5, 1944, and each Saturday thereafter.

Briefly the facts are: that Claimant is a part-time Comptometer Operator—being employed for several days during two periods of each month, starting the first and fifteenth respectively; her hours of work, when employed, are 8:15 a. m. to 5:00 p. m.; that on the Saturdays covered by the claim she was released at 12:55 p. m. and paid only for the time she actually worked.

As we view it the claim must stand or fall on the following provision contained in a Mediation Agreement executed by the Carrier and the Organization May 22, 1941:

“Only such employees as are, in the judgment of the Management, necessary to perform the business of the Carrier shall be required to work on Saturday afternoon, and no deduction shall be made from the pay of the employees relieved.” (Emphasis supplied.)

The Carrier contends that the rule was not intended to cover part-time employees and has never been applied to them. It is argued that under the Agreement part-time employees have no seniority rights; that part-time employees are under no obligation to accept calls for work and that they are not subject to disciplinary rules. All this may be conceded but it does not follow that such employees are not beneficiaries of rules relating to hours of work and rates of pay.

It will be noted that they are not excepted from the provision of the Mediation Agreement which we have quoted. And we think they are clearly covered by it; and that their rights under it cannot be defeated by past practice acquiesced in by them.

We think, however, that the Carrier acted in good faith in interpreting the Agreement as it did. Consequently, we shall not impose a penalty by allowing the claim for violation prior to August 28, 1945,—the date the claim was presented to the Carrier. Awards Nos. 2137, 3136.

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 parties waived oral hearing thereon.

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

Claim sustained from August 28, 1945.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1947.