

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**

DES MOINES UNION RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that regularly assigned Relief Man—Carl S. Schreck and regularly assigned Truckman, A. M. Van Scoy, shall each be compensated for eight hours at rate of time and one-half their hourly pro-rata rate for Sunday, December 22, 1946.

EMPLOYES' STATEMENT OF FACTS: The claimants in this case are regularly assigned employees engaged in service necessary to continuous operation of the Railway. Sunday, December 22, 1946, was the assigned rest day of the claimants. They were not notified or called to perform work on that day, hence did not work. The pro-rata hourly rate of employees Schreck and Van Scoy is 99½¢ per hour and 93-1/8 per hour, respectively.

On the same day, Sunday December 22, 1946, due to the increased volume of holiday mail, the carrier hired two new men, a Mr. Brown and Mr. Laudel, and worked them as truckmen on that day only—paying each at the regular rate of truckman, 93-1/8 cents per hour or \$7.45 per day, instead of using regularly assigned employees Schreck and Van Scoy, who were available and should have been called.

POSITION OF EMPLOYES: There is an agreement between the Parties bearing effective date of January 1, 1925 from which the following rules, or portions thereof, are quoted below:

Rule 1: "These rules will govern the hours of service and working conditions of following classes of employees of the Des Moines Union Railway Company.

- A. Clerks, including Delivery and Receiving Clerks
- Assistant Foreman
- Freight and Warehouse Checkers
- Sealers
- Stenographers
- Ticket Sellers or Clerks
- Typists
- Telephone Switchboard operators

per day to the writing and calculating incident to keeping
and other employees who devote not less than (4) hours

For the information of the Board, both of the above named claimants worked every day during the 6 day period immediately preceding December 22, 1946 and worked every day during the 6 day period immediately following December 22, 1946; and it is, therefore, obvious that the alleged claim for 8 hours at punitive rate account of not being required to perform service on Sunday, December 22, 1946, is wholly without basis under the rules of the existing agreement.

The submission of this alleged dispute to the Board is without question an attempt on the part of the Committee to change the rules of the existing agreement in a manner contrary to the provisions of the Railway Labor Act; therefore, the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: On Sunday, December 22, 1946, Carrier used two outsiders as truckmen instead of using regularly assigned employees who were available.

Carrier contends the two men it used were bona fide employees for the one day they were used.

However, the two men had no seniority under Rule 3 (m) which reads:

"A seniority roster of all employees in each departmental district will be posted in agreed upon places accessible to all employees affected in January of each year, a copy will be furnished employers' representative.

"Rosters will show name, position occupied, location, date of employment and seniority rights in district, except that positions specified in Rule No. 1-(b) will not be included and their seniority rights will not apply until they have been in continuous service of the Railway Company in excess of six (6) months."

Truckmen are expressly included under Rule 1 (b), the Scope rule. A number of awards of this Board have announced the principle that such action by Carrier violates seniority rights.

Accordingly, the claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1948.