

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 that Mary A. Duffy, Clerk in office Auditor Freight and Passenger Accounts was entitled to and should properly have been assigned on an overtime basis on March 12, 1945 to the performance of certain work regularly assigned to her position and that she be paid for wage loss sustained account of failure of the Railroad so to assign her.

EMPLOYES' STATEMENT OF FACTS: A portion of the duties ordinarily and regularly required of Miss Mary A. Duffy is that of abstracting waybills covering shipments originating on other carriers and delivered to consignees on rails of Western Pacific. On March 12, 1945, Miss Duffy was engaged in the work of abstracting waybills covering shipments originating on C. B. & Q. Railroad. At the end of her tour of duty on this date, she had not as yet completed this work. Upon reporting for work on March 13, 1945, Miss Duffy learned that another employe had been assigned, on an overtime basis, to complete the work remaining on her desk.

POSITION OF EMPLOYES: There is in existence an agreement bearing effective date of December 16, 1943 from which the following rule is cited:

Rule 20: "Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one shift, time in excess of 8 hours, exclusive of the meal period, in any 24-hour period, shall be considered over time and paid on the actual minute basis at the rate of time and one-half.

Employees shall not be required to suspend work during regular hours to absorb overtime.

In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on Sundays and holidays, the same principle shall apply."

Last paragraph of Rule 20, quoted above, provides that in working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. During the period involved in this claim Miss Duffy was regularly assigned to the class of work in question. Due to the volume of work to be performed, she was not able to complete the abstracting of the C. B. & Q. account on March 12, 1945. Under a proper application of Rule 20, Miss Duffy should have been

that class of work. It will be noted that Mrs. Guadagnini and Miss Hensler were senior to Miss Duffy, and they were not required to work overtime on that night.

It is very apparent that Rule 20 applies to the class of work and not to any particular job within that class.

Submitted herewith as Carrier's Exhibits "A", "B", "C", "D", "E", "F" and "G" are copies of correspondence between Miss Duffy and the Carrier, and between representatives of the Clerks' Organization and Carrier involving this dispute.

SUMMARY: Carrier contends that the claim of the employees should be denied for the following reasons:

(1) Rule 20 does not require the use of any individual employee for the performance of overtime. Its only provision is that we must use an employee regularly assigned to class of work for which overtime is necessary.

(2) Miss Barton and Miss Pavelko were regularly assigned to class of work for which overtime was necessary and their use was strictly in accordance with the schedule.

(Exhibits not reproduced.)

OPINION OF BOARD: Five interline clerks in the office of Auditor of Freight and Passenger Accounts were assigned to compile abstracts of interline waybills and related work. The three senior clerks were rated \$7.55 per day. The remaining two clerks, of which Claimant was the junior, were rated \$7.21 per day. Claimant failed to complete the abstracting of waybills given her on March 12, 1945. Two of the senior clerks completed the work on an overtime basis. Claimant contends that the overtime work belonging to her and demands that she be paid her wage loss resulting from the improper assignment.

The applicable rule states:

"Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one shift, time in excess of 8 hours, exclusive of the meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"Employees shall not be required to suspend work during regular hours to absorb overtime.

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on Sundays and holidays, the same principle shall apply." Rule 20, current Agreement.

This rule provides that in working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. This rule must not be confused with those that give overtime work to the occupant of the position out of which it grows. In the instant dispute, five interline clerks were performing the class of work out of which the overtime in question arose. Consequently, the overtime was reserved to the class and not to an individual. The assignment of the overtime to the two senior clerks in the class was in all respects proper under the rule.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.