

THIRD DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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 System Committee of the Brotherhood of Railway Clerks that R. E. Falquist, clerk in Store Department at Sacramento, be paid the difference between what he earned during period June 5 to July 13, 1944 and what he would have earned during this same period had he been assigned to position of Assistant Accountant.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 1, 1944 A. E. Madan was regular incumbent of position of Assistant Accountant and R. E. Falquist was regular incumbent of position of Assistant Price Clerk, both positions being in office of General Storekeeper, Sacramento, California.

The rate of Assistant Accountant has now become \$9.22 per day, and the rate of Assistant Price Clerk has now become \$8.87 per day.

Through his Clerks' Circular No. 203 of May 23, 1944, General Storekeeper advertised position of Section Stockman, Store No. 5 for bids. Clerks' Circular No. 209 of June 2, 1944 stated that no qualified bids had been received for this position.

Effective June 5, 1944 A. E. Madan was placed on position of Section Stockman. Position of Assistant Accountant was allowed to remain vacant and was not advertised for bids until July 8, 1944.

During the period June 5, 1944 to July 13, 1944 all male employees in office of General Storekeeper worked considerable overtime.

R. E. Falquist was assigned to position of Assistant Accountant through Clerks' Circular No. 213 of July 14, 1944.

POSITION OF EMPLOYEES: The following rules are cited from agreement bearing effective date of December 16, 1943:

"Rule 29: Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. When an employee junior to other applicants is assigned to a bulletined position, the senior employees making application will be advised the reason for their non-assignment if they request such information in writing and file it within 15 days from date of assignment.

Claim of the System Committee of the Brotherhood of Railway Clerks that R. E. Falquist, clerk in South Sacramento Store, be paid the difference between what he earned during the period June 5 to July 13, 1944 and what he would have earned at Accountant's rate of pay during the same period.

DECISION: As you were shown in conference, Falquist, while working as Assistant Price Clerk during the period involved in this dispute, was paid \$360.63 for straight time and overtime, as compared with straight time compensation of \$255.42 which would have been paid to him if he had worked as Assistant Accountant without performing any overtime work.

In Carrier's opinion, Falquist was adequately compensated, and there is no justification for any additional payment.

Claim is declined.

Yours truly,

(s) E. W. Mason—HRF
Vice President and General Manager."

SUMMARY

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

(1) During the period herein involved the position of Assistant Accountant was assigned to Madan, who, at his own request, was trying out on a position of Section Stockman.

(2) The Carrier is not prohibited by the Schedule from blanking a six day position such as that of Assistant Accountant.

(3) Insofar as Falquist's earnings are concerned, he is better off to the extent of \$105.21 than he would have been on the position of Assistant Accountant.

OPINION OF BOARD: On and prior to June 1, 1944, A. E. Madan held position of Assistant Accountant, present rate \$9.22 per day, and R. E. Falquist held position of Assistant Price Clerk, present rate \$8.87 per day. On May 23, 1944, the position of Section Stockman was advertised and no qualified bids were received. On June 5, 1944, Madan was given position of Section Stockman and his former position was left vacant and not advertised until July 8, 1944. The position was assigned to Falquist on July 14, 1944. It is asserted that all male employees in the office worked considerable overtime from June 5, 1944 to July 13, 1944. The claim is for the difference between what Falquist earned and what he would have earned had he been assigned the position of Assistant Accountant in accordance with Agreement requirements.

The applicable portions of controlling rules are:

"All new positions and vacancies, except Rule 2 positions and laborers', will be promptly bulletined in agreed upon places accessible to all employees affected for a period of 5 calendar days. * * *

New positions or vacancies of 30 calendar days' or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the 30 day limit, they shall be immediately bulletined, showing, if practicable, probable or expected duration.

Employees will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 40 (d) or Rule 29." Rule 31, current Agreement.

"Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. * * *"

Rule 29, current Agreement.

It is not disputed that Rule 40 is without application. The Carrier contends, however, that Rule 29 has no application for the reason that it had a right to blank the position of Assistant Accountant. We think not. All new positions and vacancies were required to be promptly bulletined. Pending assignment by bulletin, employees are required to be selected under Rule 40 (d) or Rule 29, the latter rule applying in the present case. In any event, Falquist was the employee entitled to fill the position and Carrier was obligated to assign him to it pending assignment by bulletin and after bulletining as well.

Carrier contends that Claimant earned more on his old position because of overtime worked than he would have earned on the new one and that the claim is not valid for that reason. Overtime, prospective or actual, is not a controlling factor in a case of this kind. The loss sustained by Claimant is the difference in the assigned rates of the two positions and the claim is sustained for that amount.

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 violated.

AWARD

Claim sustained per Opinion.

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.