

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 DENVER AND RIO GRANDE WESTERN RAILROAD  
COMPANY

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

- (1) The Carrier violated Rule 16 when it failed and refused to permit D. T. Reid to occupy his regularly assigned position of Yard Checker, hours 6:00 A. M. to 2:00 P. M., at Provo Yard Office, and arbitrarily held him on the regular relief clerk assignment following the expiration of seventy two hours written notice given by Reid covering his preference in the exercise of seniority when the starting time of positions of the relief clerk assignment was changed in excess of one hour for more than six consecutive days.
- (2) D. T. Reid shall be paid a day's pay at the rate (\$7.96 per day) of his regularly assigned position of Yard Checker at Provo Yard Office, hours 6:00 A. M. to 2:00 P. M., rest day Monday, in addition to day's pay allowed for each Tuesday, Wednesday, Friday and Saturday beginning August 29, 1946 with the expiration of the seventy-two hour period as stipulated in Rule 16, and continuing to October 23, 1946 inclusive, during which period he was held on the regular relief clerk assignment and required to work outside the hours of his regular assignment on four days each week.

JOINT STATEMENT OF FACTS: Clerk D. T. Reid bid for and was assigned to position of Relief Clerk at Provo, Utah, on bulletin dated February 12, 1946, and the hours of this assignment were as follows:

Sunday	General Clerk	6:00 AM to 2:00 PM	Rate \$6.98 per day
	Yard Office		
Monday	General Clerk	10:00 PM to 6:00 AM	Rate 6.98 per day
	Yard Office		
Tuesday	Baggageman-Janitor	11:00 PM to 8:00 AM	Rate 6.39 per day
	Passenger-Station	meal period 3:30 AM to 4:30 AM	
Wednesday	Yard Checker	10:30 PM to 7:30 AM	Rate 6.48 per day
	Yard Office	meal period 2:30 AM to 3:30 AM	
Thursday	REST DAY		
Friday	Yard Checker	12 noon to 9:00 PM	Rate \$6.48 per day
	Yard Office	meal period 4:00 PM to 5:00 PM	
Saturday	General Clerk	2:00 PM to 10:00 PM	Rate \$6.98 per day
	Yard Office		

presented in this case). Dispute was disposed of on basis of National Railroad Adjustment Board, Third Division, Awards 3444 and 3445, that is, time and one-half rate for hours worked outside the regular assignment, which in this case would mean payment of 32 days at time and one-half rate in lieu of 32 days at pro rata rate. Settlement in the Juliano claim is attached, marked Carrier's Exhibit "A."

The Carrier does not cite settlement of the Juliano case as a basis for disposition of this dispute, but rather to show there is no basis whatever for claiming two days pay for Clerk D. T. Reid. The facts in the two cases differ in that Clerk Juliano was forced off his regular assignment (subsequently returning thereto), while Clerk Reid was held on an assignment after making application to be relieved therefrom.

The Carrier holds Rule 16 has no application, but rather that Rule 11-D governs and respectfully requests that your Honorable Board so decide.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant bid for and was assigned to position of Relief Clerk at Provo, Utah, on February 12, 1946. The Carrier gave notice effective August 25, 1946, of a change in the hours of his position. The change was sufficient under the rules to permit claimant to exercise his seniority on another position which he did. The position claimed by him was that of Yard Checker, hours 6 A. M. to 2 P. M., Monday as his day of rest. The Carrier held him on the relief position until October 24, 1946, and permitted him to take the position of Yard Checker after that date only. It is the contention of the Organization that Claimant was held on the relief position to enable the Carrier to avoid calling the Clerks on the seven day positions to perform the work on their rest days at the overtime rate. This is asserted to be a violation of Rule 39 (a), current Agreement, providing:

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

The Carrier contends that the situation is covered by Rule 11 (d), current Agreement, which provides:

"An employe awarded a bulletined position, if not placed on such position within ten (10) calendar days of notification of assignment, will be paid the difference between the rate of position he is then occupying and rate of new assignment."

It is clear in the present case that Claimant was entitled to occupy the position of Yard Checker on and after August 25, 1946. His claim to the position was grounded on a displacement right which became operative only when Carrier changed the hours he was working on his relief position. It was not a position awarded him under bulletin. Nor was a penalty prescribed for failure to place him on the new position as was the case in Award 3551. Consequently, neither Rule 11 (d) nor Award 3551 control the decision of the case.

We think the rule has been established in case of this kind that if the Carrier holds an employe off a position he is entitled to under the rules, that he shall be paid for the time so wrongfully held off at the pro rata of the position. Awards 2346, 2823, 3416, 3913. This penalty is grounded on the theory that by wrongfully holding Claimant on the relief position, the necessity of calling the occupants of the seven day positions to work their rest days at the time and one-half rate was eliminated in violation of Rule 39 (a). Consequently, Claimant is entitled to compensation at the pro rata rate for the four days of his weekly assignment that he was not permitted to work.

**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 employes 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.

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.