

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 of the Brotherhood of Railway Clerks that L. D. Michelson, Assistant Chief Clerk, in Superintendent's Office, Elko, Nevada, be compensated for wage loss sustained account of failure of the Railroad to call him for performance of certain clerical work on April 18, 1944 and on subsequent similar occasions.

EMPLOYEES' STATEMENT OF FACTS: L. D. Michelson held regular assignment on position of Assistant Chief Clerk, Superintendent's Office, Elko, Nevada.

Prior to April 18, 1944, as part of his regular assignment, it had been the practice to require Michelson to assist in making up Train and Engine payrolls.

On April 18, 1944 and on subsequent dates the Carrier assigned this work to employees who were junior to Michelson. These employees did not perform this work in connection with their regular tour of duty.

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

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 overtime and paid on the actual minute basis at 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 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

The Assistant Chief Clerk is in effect an employee at large in the office. The fact that he may participate at one time or another in the performance of certain duties does not make it mandatory that he be called to perform such work whenever it is necessary for those duties to be done on an overtime basis.

In the instances involved in this case no supervision was required of the Assistant Chief Clerk because the head timekeeper was on duty. All of the employees called to assist the head timekeeper and other T&E timekeepers were employees who were frequently and I might say regularly used for this purpose.

Claim is declined.

Yours truly,

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

POSITION OF CARRIER: Rule 20 does not obligate the Carrier to call any specific employee for any specific overtime work. It definitely requires the use of "employees regularly assigned to class of work for which overtime is necessary".

In the instant dispute, the class of work for which overtime was necessary was timekeeping and employees regularly assigned to that class of work were used.

Assistant Chief Clerk Michelson was not regularly assigned to timekeeping and it is Carrier's contention that there is no basis for claim in his behalf.

OPINION OF BOARD: This case involves the claim of one L. D. Michelson, Assistant Chief Clerk, Superintendent's Office, Elko, Nevada, for wage loss allegedly sustained because of failure to call him for performance of certain clerical work on April 18, 1944. Employees rely on Rules 20 and 29 of the Agreement between the parties effective December 16, 1943.

It appears that the work involved was assistance (timekeeping) in making up of Train and Engine payrolls on April 18, 1944 and on subsequent similar occasions.

There is conflict between the Employees and the Carrier with respect to the facts in this case. Employees assert that Michelson had been regularly assigned to the work in question as of April 18 and subsequent similar occasions. Carrier denies that Michelson was regularly assigned to handle Trainmen and Enginemen timekeeping, or any other timekeeping, saying that his position is one of assistance to the Chief Clerk to the Superintendent, yet admitting that prior to the payroll period involved it had been the practice to have Michelson assist on Train and Enginemen payrolls when necessary, due to insufficient experienced clerks and to supervise the work.

In searching the record in an attempt to reconcile this conflict with respect to whether or not Claimant had been regularly assigned to the class of work for which overtime was necessary on April 18th, we find this statement in the supplemental brief of the Employees:

"Where as in the instant case, employees not regularly assigned to class of work for which overtime is necessary are to be used, the selection of such employee or employees must be made on a seniority basis in accordance with Rule 29." (Emphasis supplied.)

Thus there is a conflict in the position of the Employees with respect to Michelson's regularly assigned duties. Suffice it to say that this conflict together with the Carrier's explanation of the use of Michelson on the work of making up the Train and Engine payrolls resolves the issue of what constituted Michelson's regularly assigned duties in favor of the Carrier.

Having resolved this issue, we again return to the record to determine whether the two clerks junior to Michelson had any better standing under Rule 20 with respect to the work involved. It appears that at least one of the clerks junior to Michelson, Teichman, was used in connection with the preparation of Train and Engine payrolls prior to April 18, 1944, although generally speaking he was used on Maintenance of Way and Structures Payrolls. The other, Primeaux, was used on preparation of Maintenance of Way and Structures Payrolls prior to the said date. It does not appear from the record whether or not there is a definite line of cleavage in the payroll department in the work of preparing Train and Engine Payrolls or whether a greater amount of skill is required on the one as opposed to the other. Nevertheless, even assuming that a greater amount of skill is required in the preparation of Train and Engine Payrolls, which appears to be a reasonable presumption in view of the more variable hours worked by Train and Engine personnel as opposed to Maintenance of Way and Structures, it does not appear unreasonable to conclude that one skilled on Maintenance of Way and Structures Payrolls could be of assistance on Train and Engine Payrolls. In any event, it is all payroll work. These factors, taking into consideration the supervisory character of Michelson's regularly assigned duties, lead us to conclude that Primeaux and Teichman had a superior claim under Rule 20 on the overtime work involved, particularly where as here it has been asserted and not denied that Michelson's supervisory services were not required on this occasion.

Accordingly, we hold that the claim should be denied.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of October, 1948.