

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**

MISSOURI PACIFIC RAILROAD COMPANY
(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on December 24, 1947, it utilized Clerk Mrs. Lillian Rose who had no established seniority on the Clerks' seniority roster, to double and fill the vacancy of the regularly assigned employee, Clerk J. P. Bailey, on position of Engine Dispatcher at North Little Rock, Arkansas, hours 11:00 P. M. to 7:00 A. M., and failed and refused to permit the second shift Engine Dispatcher, Clerk M. C. Anderson, hours 3:00 P. M. to 11:00 P. M., whose seniority date is October 19, 1942, who was the incumbent of the work of Engine Dispatcher in the wheel of three such positions covering the period of twenty-four hours around the clock, to work the authorized overtime to which his seniority rights and incumbency rights entitled him to work and be paid for under the provisions of rules 6 (a) and 25 (b), second paragraph, of the Agreement;

2. That Clerk M. C. Anderson shall be compensated for a day's pay, time beginning 11:00 P. M., December 24 and ending at 7:00 A. M., December 25, 1947, eight hours at the time and one-half time rate of \$1.83375 per hour, amount \$14.67, account Carrier's action in violation of the Agreement, which action was a prohibited discrimination against the claimant.

EMPLOYEES' STATEMENT OF FACTS: On December 24, 1947, the Carrier maintained at its North Little Rock, Arkansas Mechanical Department Offices, among other positions, a "pool" of six (6) regularly established and assigned positions, three of which were classified as Engine Dispatcher, which were relieving and being relieved in a wheel around the clock of the twenty-four hours each day, and three positions of Roundhouse Clerk, all three of which were assigned to day hours, one to eight consecutive hours with twenty minutes allowed with pay in which to eat under the provisions of Rule 23, section (c) of the Agreement, and two to eight hours, exclusive of thirty minutes meal period and one hour meal period respectively, all of which came within the category of "necessary to the continuous operation of the Carrier", as provided for in the second part of Sunday and Holiday Rule 26 of the current Clerks' Agreement, and to which "pool" there was a regularly

OPINION OF BOARD: On December 24, 1947, Carrier maintained three Engine Dispatcher positions at its North Little Rock, Arkansas offices who worked around the clock. It also maintained three Roundhouse Clerk positions, all of which were daytime positions. All six positions were seven-day positions necessary to the continuous operation of the Carrier. A relief clerk position was also maintained, the occupant of which relieved the occupants of the other six positions on their respective rest days.

On December 24, 1947, Mrs. Lillian Rose worked the position of Roundhouse Clerk, 8:00 A. M. to 4:30 P. M., occupied by W. P. Toombs who was on vacation. Mrs. Rose held no seniority on the Clerks' roster. She was then called to work the position of Engine Dispatcher J. P. Bailey, 11:00 P. M. to 7:00 A. M., who also was on vacation. Mrs. Rose was paid the punitive rate of time and one-half on account of the second assignment being within the same twenty-four hour day as the first. The claimant, M. C. Anderson, worked his position of Engine Dispatcher, 3:00 P. M. to 11:00 P. M., on December 24, 1947, and claims that he should have been doubled on Engine Dispatcher Bailey's position instead of Mrs. Rose on account of his being the senior employee.

The applicable rule is as follows:

"(a) Except as otherwise provided in these rules, time in excess of eight hours, exclusive of the meal period, on any day will be considered overtime and paid for on the actual minute basis at the rate of time and one-half.

(b) No overtime will be worked without authority of superior officer except in case of emergency when advance authority is not obtainable.

To avoid discrimination as between employees to be used on authorized overtime work, the incumbents of positions which require overtime hours will be used if possible." Rule 25, current Agreement.

We think the Carrier was obliged to assign the work of the position here involved to a relief man, if one was available. If a relief man was not available, it could be assigned to a qualified extra man. If neither a relief man nor an extra man was available, and the work had to be performed as overtime work, then it belongs to the senior incumbent of the position requiring the overtime. Rule 25 (b). Claimant as one of three around-the-clock occupants of the position, was an incumbent of the position requiring the overtime within the meaning of this rule. Award 4103. As the senior occupant available, he was entitled to perform the work and should have been called. Mrs. Rose, having performed eight hours' service on December 24th before being called for the work, was not an available extra clerk within the meaning of the rule stated.

The Carrier urges that the dispute is governed by Rule 9 which deals with temporary vacancies. The rule has no application to the situation here existing. The controversy before us is one in which the right to perform work as overtime was involved. There was no one available to fill the position at the pro rata rate. This brings into play Rule 25 (a) and 25 (b) which has to do with employees entitled to perform overtime work of a position.

An affirmative award is required. Claimant's loss of the overtime work is the pro rata rate of the position. It is only where work is actually performed in excess of eight hours on any day that the overtime penalty rate of time and one-half applies. Award 4037 and awards cited therein. The claim will be sustained at the pro rata rate.

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 employee involved in this dispute are respectively carrier and employee 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 Agreement was violated.

AWARD

Claim sustained at pro rata rate of the position.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.