

Award No. 4203

Docket No. CL-4022

**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 ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Clerk Marvin S. Lazelle shall be paid the difference between the straight time rate and time and one-half rate for the second eight (8) hour tour of duty worked on October 11, 1945.

**EMPLOYEES' STATEMENT OF FACTS:** This dispute arose as a result of Carrier's refusal to pay so-called extra and/or off-in-force-reduction employees at the rate of time and one-half for time in excess of eight hours on any day. So far as the Employees have been able to develop, Carrier paid all employees time and one-half for time in excess of eight hours on any day under the provisions of the current Agreement from its effective date up until about October 1, 1944, at which time they took the position that extra and/or off-in-force-reduction employees were not entitled to punitive rate for time in excess of eight hours.

Marvin S. Lazelle, a so-called extra employee on the date here involved, was assigned to temporarily relieve the occupant of regular established Assistant Chief Yard Clerk Position No. 575, at Arkansas City, Kansas, hours of assignment 12:01 A. M. to 8:00 A. M. After having completed this assignment at 8:00 A. M. on October 11, 1945, he was required to return and protect second trick Assistant Chief Yard Clerk Position No. 570, from 4:00 P. M. to midnight, on this same date. Claimant Lazelle was, therefore, required to perform sixteen hours service in the twenty-four hour period measured from the starting time of his first tour of duty on October 11, 1945.

Carrier has advised that where a so-called extra and/or off-in-force-reduction employee was protecting a temporary vacancy and before completing such vacancy was used in an emergency to protect a second vacancy within a twenty-four hour period, they would consider the hours of the original vacancy as the employee's regular assigned hours and would compensate such employees at time and one-half for services on the second vacancy. On the other hand, however, they advised that where an extra and/or off-in-force-reduction employee had completed a vacancy and was thereafter required to fill a second vacancy within a twenty-four hour period, there was no requirement under Agreement rules to pay for the second tour of duty on that day at punitive rate. Under this interpretation which Carrier has placed on the Agreement rules since about October, 1944, they could require a so-called extra and/or off-in-force-reduction employee to protect as many as three consecutive eight hour tours of duty on three different positions in the same twenty-four hour period at pro rata rate.

interpretation of existing working rules. He is convinced that it was not the intent of the parties, nor is it reasonable to assume that they could have intended that when a carrier grants an employe a vacation and his job is such that it must be filled with a relief worker, an additional cost of overtime pay must be incurred for the first shift."

In conclusion the Carrier desires to reassert that the Third Division's determination of this dispute must necessarily be based on the language of the agreement rules (Article VI, Section 1 and Article VII, Section 1) of the current Clerks' Agreement in effect between the parties to this dispute and not upon the language of the differently worded overtime rules heretofore interpreted in prior awards of the Third Division and which rules did not include the language "continuous with and outside of regular assigned hours" which appears in the overtime rule (Article VII, Section 1) relied upon by the Brotherhood in this dispute. The Board's determination of the Brotherhood's claim in this dispute on the basis of the language contained in the overtime rule (Article VII, Section 1) of the agreement in effect between the parties to this dispute will clearly warrant a complete denial of the Brotherhood's claim whereas a sustaining award would constitute a modification or revision of the agreement rule (Article VII, Section 1) which the parties had agreed to in good faith. Such a revision can only be accomplished through the process of negotiation as required by the amended Railway Labor Act.

The instant dispute is clearly without merit or schedule support and must be denied.

The Carrier is uninformed as to the arguments the Brotherhood will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

**OPINION OF BOARD:** The claim presented herein is similar to that presented in Award 4201. Its disposition is governed by the same principles which are fully set forth in the Opinion of the Board in that case. Accordingly, the claim should be sustained.

**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 Employes 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

That the Carrier violated the Agreement.

#### AWARD

Claim sustained.

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.