

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier violated the Clerks' Agreement:

- (1) When it required Teller, Mr. O. R. Axley, Assistant Treasurer's Office, Omaha, to perform work of distributing pay roll vouchers outside of his regular working hours, and
- (2) That Teller, Mr. O. R. Axley, should be paid on overtime basis at time and one-half rate for all time worked on payroll vouchers outside of his regular working hours, retroactive to January 1, 1944.

EMPLOYEES' STATEMENT OF FACTS: Position of Teller, Treasury Department, Omaha, was excepted from rules of schedule agreement governing working conditions of Clerk and other office, station and stores employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective July 1, 1934, under provisions of Rule 1 (d) of said agreement. The distribution of payroll vouchers is work of the Treasury Department which is covered by scope rule 1 (a) of said schedule agreement, and is assigned to positions number 4-7-9-10-11-12-13-14-15-20-21-24 and 30, all of which are fully covered by all rules of said agreement. In distributing payroll vouchers covering back payrolls of wage increase provided for in Washington Wage Agreement of December 29, 1943 and January 17, 1944, Teller, Mr. O. R. Axley, was assigned to assist clerks with distribution, after completing his regular tour of duty as Teller. Teller, Mr. O. R. Axley's regular working hours were from 8:00 A.M. to 1:00 P.M. and from 2:00 P.M. to 5:00 P.M. with such incidental overtime as may be necessary to handle his regular duties as Teller.

On January 28, 1944, instructions were issued to General Managers by Vice President of Operations, reading as follows:

"Understand that in the compilation of the back pay under the Washington Agreement it has been necessary in some of the division superintendents' offices to use employees on excepted positions to assist timekeeping bureau. Where employees on excepted positions are so used, they should be paid for overtime on the same basis as other employees, that is, time and one-half, and in this case no allowance for supper money as seems to be the custom at some points. This ruling is based on the fact that the use of employees not asso-

expense, he has no right of action outside the contract. His employment is terminable at will, and his discharge without a hearing was not an actionable wrong. * * * The appellant accepted the positions with its rights, privileges and limitations. He is therefore not within the bargaining contract and cannot claim any rights thereunder." (Emphasis supplied.)

CONCLUSION

The alleged claim for additional compensation in the form of overtime is without merit because the overtime provisions of the agreements involved clearly do not apply to the Claimant or to the position of Teller which he occupies, which by agreement was removed from the overtime and hours of service rules. As Judge Messmore, in Third Division Award No. 3458, said:

"The effect of the rules from which the manager of the Zone Revision Bureau is excepted is that such positions are not subject to the seniority rules of the agreement, nor the overtime rules, and are paid on a monthly basis to cover all services performed." (Emphasis supplied.)

Any arrangement which might have been made by the Carrier with regard to the payment of additional compensation to other employees excepted from the operation of the agreement is neither material nor relevant to this dispute, unless the Claimant is within the arrangements made and we have shown that he is not.

The Carrier respectfully requests that this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant occupied the position of teller in the Treasury Department of the Carrier at Omaha. During the years 1944 and 1946, Claimant was directed to assist in the distribution of retroactive payroll vouchers required by the Washington Wage Agreement of December 29, 1943 and January 17, 1944, after completing his regular tour of duty as teller. At the time the work of distributing payroll vouchers was performed in 1944, Claimant was wholly excepted from the Schedule Agreement then in force. In 1946, he was excepted from all provisions of the Current Agreement except Rules 10, 15, and 22. Admittedly, Claimant was excepted from the overtime and call rules of both Agreements. The refusal of the Carrier to pay the claimed overtime therefore violates no rule of the collective Agreements in force when the work was performed.

The record shows that Claimant was paid on a monthly basis. The general rule is that an excepted employee, paid on a monthly basis, can have no recourse to the overtime or call rules. It is contemplated that the monthly rate covers all services rendered the Carrier regardless of the amount of time the employee works in excess of the regularly established office hours. The Carrier may, of course, voluntarily enter into special arrangements with an excepted employee with reference to his rate of pay which would be binding upon the parties. This, the Organization contends, was done.

The record discloses that the preparation and distribution of the retroactive pay vouchers resulting from the wage increases heretofore described, brought about a tremendous amount of additional work on the part of those charged with its performance. That it was work assigned to Clerks under the Schedule Agreement does not appear to be controverted. Those to whom it was assigned were working overtime. The occupants of excepted positions were utilized in an effort to complete the work. As a part of its efforts to facilitate the completion of this work, the Carrier authorized the payment of overtime to occupants of certain excepted positions. Claimant contends that he is within the purview of this authorization which was directed to the three general managers on Carrier's property. It states:

"Understand that in the compilation of the back pay under the Washington Agreement it has been necessary in some of the division

superintendents' offices to use employees on excepted positions to assist timekeeping bureau. Where employees on excepted positions are so used, they should be paid for overtime on the same basis as other employees, that is, time and one-half, and this case no allowance for supper money as seems to be the custom at some points. This ruling is based on the fact that the use of employees not associated with the timekeeping bureau for this emergency is on work other than their regular work."

The record discloses that the work here involved was not regularly assigned as a part of Claimant's duties although he did perform such work to some extent as a part of his regular duties according to his own statement. But even so, he does not come within the scope of the quoted authorization. It was addressed to Carrier's three general managers. It referred only to excepted positions in the division superintendents' offices. It was based on the fact that such employees were not associated with the timekeeping bureau. In form, it was an instruction by management to a subordinate official, lacking the usual elements of an Agreement. Clearly, this Claimant is not within the class of employees specified in this communication.

It is urged, however, that Carrier agreed to apply the overtime rules of the Agreement to excepted positions during the period involved in the claim. In support of this contention, the Organization cites an occurrence in which, by agreement with the Organization, excepted employees were used in eliminating a war-time congestion of freight and mail at the Omaha Freight House and the Council Bluffs Passenger Terminal, and were paid the time and one-half rate of their positions for such service. The effect of this arrangement was to do by specific agreement that which the Carrier would not have been obliged to do in the absence of such agreement. It was made to cover a specific emergent situation and can have no effect except as to the situation contemplated when the agreement was made. Consequently, it has no bearing on the case here presented.

It is also contended that as the work done was outside of Claimant's regular duties, that it lends some support to the claim. The answer to this is that no matter what service the Claimant performed for the Carrier, the overtime rule does not apply unless an agreement to that effect can be established.

It is asserted that the payment of overtime to some excepted employees and not to others is discriminatory. We know of no rule that requires the occupants of excepted positions to be uniformly treated. Such uniform rights have been attained for most employees by the negotiation of collective agreements. When an employee is excepted from the terms of such agreements, the benefits growing therefrom are not available to him.

The argument is advanced that as the work here claimed as overtime belonged to employees under the Agreement, that its performance by an excepted employee requires that the Carrier pay the Claimant for it. We cannot agree with this view. In the first place, Claimant's monthly salary is in payment of all the work he performs in a calendar month. In the second place, a claim for payment for the work as overtime, based on the fact that it should have been performed by employees covered by the Agreement, can be asserted only by an employee covered by the appropriate rules of the Agreement.

The Organization has failed to establish an agreement by the Carrier to pay this Claimant additional compensation for the work constituting the basis for the claim. Under such circumstances, Claimant's monthly salary includes his compensation for the work for which claim is made. No basis for an affirmative award exists.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties 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 there was no Agreement violation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.