

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 WESTERN PACIFIC RAILROAD COMPANY

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

- (a) The seniority rights of Head Timekeeper W. A. Thorpe were violated when the Carrier failed to send Mr. Thorpe to Carlin, Nevada to compute payrolls and write discharge checks in order to pay off the ice harvest gang on February 5, 1948.
- (b) Mr. Thorpe is entitled to and should be allowed four hours at the rate of time and one-half account failure of the Carrier to use him for the performance of overtime work in accordance with the provisions of Rules 20 and 29 of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: The ice harvest gang at Carlin, Nevada was to be disbanded at the completion of its shift at 5:00 P. M. on February 5, 1948. It was necessary to send employees from the Superintendent's Office at Elko to Carlin to compute payrolls, write discharge checks and make tax receipts, record earnings of employees, check the names and Social Security account numbers of employees and pay off approximately seventy-eight men. The following employees were notified to travel to Carlin for this purpose:

	Seniority
L. D. Michelson . . . Assistant Chief Clerk	date June 10, 1928
Fay F. Strange . . . Assistant Timekeeper	" June 18, 1941
E. E. Mueller . . . Assistant Timekeeper	" January 16, 1943
J. G. Etchebehere . . General Clerk	" December 13, 1945

These employees departed from Elko at approximately 10:20 A. M. and arrived at Carlin about 11:00 A. M. They completed paying off the gang and arrived back at Elko at 9:00 P. M. the same day, having worked four hours overtime each. The assigned hours of service of all the employees of the Superintendent's Office at Elko here involved were 8:00 A. M. to 12 noon and 1:00 P. M. to 5:00 P. M.

Mr. W. A. Thorpe, the Head Timekeeper in the Superintendent's Office at Elko, with seniority date of October 7, 1941, was not sent to Carlin, although two employees his junior (one of whom was not a part of the timekeeping department) were required to assist in the performance

Case No. 3133-1948-Clks.

Claim of the System Committee of the Brotherhood of Railway Clerks that:

- (a) The seniority rights of Head Timekeeper W. A. Thorpe were violated when the Carrier failed to send Mr. Thorpe to Carlin to compute payrolls and write discharge checks in order to pay off the ice harvest gang on February 5, 1948.
- (b) Mr. Thorpe is entitled to and should be allowed four hours at the rate of time and one-half because of the failure of the Carrier to use him in accordance with Rules 20 and 29.

DECISION: I do not agree with your contention that Carrier violated any of the provisions of the schedule in not sending Head Timekeeper W. A. Thorpe to Carlin in the instance covered by this dispute.

Claim is denied.

Yours truly,

(Sgd.) H. R. Fegley
Assistant to General Manager

cc: GWC,
JJD,
WJO."

The facts are very clearly set forth in Superintendent Duggan's letter of March 25, 1948, above quoted, and prove that there was no violation of Rule 20. On the contrary, we complied strictly with the third paragraph thereof.

(Exhibit not reproduced.)

OPINION OF BOARD: The Carrier maintains facilities for harvesting natural ice at Carlin, Nevada. During the harvesting season, a special gang is organized to do this work. When the work is completed, the special gang is laid off. In order to pay the men without delay, a clerical force is sent from Elko to Carlin to calculate the time and pay them off. On February 5, 1948, the Carrier directed an Assistant Chief Clerk, two Assistant Timekeepers and a General Clerk to go to Carlin to perform this work. In completing the work, the employees performing it were required to work and were paid four hours' overtime. It is the contention of the Organization that Head Timekeeper W. A. Thorpe was entitled to perform this overtime work for the reason that he held seniority over one of the Assistant Timekeepers and the General Clerk. The applicable part of the Overtime Rule provides:

"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 20, current Agreement.

Under this rule, the Assistant Chief Clerk and the Assistant Timekeeper holding seniority over Claimant were properly directed to assist in the performance of this work and no complaint is made as to them. We think the second Assistant Timekeeper (Mueller) was properly assigned under the foregoing rule although he is junior to Claimant, for the reason that it is his assigned duty to handle the timekeeping of the Perishable Freight Department in charge of the ice harvest.

As to the General Clerk, a different situation arises. He was junior to Claimant in seniority. The work of typing the discharge checks and tax receipts was not a class of work regularly assigned to his position. The record shows that such work was regularly assigned to women clerks who could not be used on overtime work because of a prohibitory law of the State of Nevada. Consequently, neither Claimant nor the General Clerk were regularly assigned to the class of work which the General Clerk performed at Carlin. Under such circumstances the senior employe qualified to perform the work should be assigned. Where overtime work cannot be assigned to employes regularly assigned to the class of work for which overtime is necessary, the senior qualified employe is entitled to perform it. Claimant should have been assigned in the stead of the General Clerk in the present case because of his seniority. An affirmative award at the pro rata rate is in order. Award 4244.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of July, 1949.