

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 Carrier violated the seniority rights of O. J. Streeter when it required him to forsake the position of his choice and assume the duties and responsibilities of the position of yard clerk on October 15, 1947.

(b) The Carrier violated the provisions of the Clerks' Agreement when it blanked the position of trucker on October 15, 1947.

(c) Mr. O. J. Streeter, Trucker at Elko Freight Station be compensated at his daily rate of pay of \$8.80 for October 15, 1947, in addition to the rate of pay of yard clerk already allowed him when he was taken off his regular assignment as trucker and used as yard clerk on this date.

EMPLOYEES' STATEMENT OF FACTS: Due to the illness of the first trick yard clerk at Elko, Nevada on October 15, 1947, it became necessary to fill this position, which was considered necessary to the continuous operation of the carrier. The Carrier thereupon required Mr. O. J. Streeter, trucker at the Elko Freight Station, hours 8:00 A.M. to 12 noon and 1:00 P.M. to 5:00 P.M. to forsake his assignment at the freight station and to report at the yard office to relieve on the position of first trick yard clerk.

POSITION OF EMPLOYES: The following rules are cited from the current Agreement bearing effective date of December 16, 1945:

"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 the 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

DECISION:

Inasmuch as the hours worked by Streeter were within the spread of his regular assignment, I cannot agree with you that he is entitled to any more compensation than the higher rate for the position of yard clerk.

Claim is denied.

Yours truly,

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

cc: GWC
JJD
WJO."

In Carrier's opinion the awards cited by the employees are not pertinent to the dispute. In the instant case, Streeter's regular hours were from 8:00 A. M. to 5:00 P. M. with one hour for meal period. He actually worked from 8:00 A. M. to 4:00 P. M. during which period he was allowed twenty minutes in which to eat. In other words, he was paid \$10.04 for seven hours and forty minutes work as compared with \$8.80 for eight hours, which he would have been required to work on his regular assignment. This is contemplated by Rule 11, and you are urged to deny the claim.

OPINION OF BOARD: On October 15, 1947, a first trick Yard Clerk, assigned 8:00 A. M. to 4:00 P. M., was absent because of illness. The position being a seven-day position necessary to the continuous operation of the Carrier, it was necessary to fill the position on that day. Claimant was assigned as a Trucker, 8:00 A. M. to 5:00 P. M., with a one-hour meal period, at the Elko Freight Station. He was required to leave his assignment on October 15, 1947, and work the first trick Yard Clerk's position. Claimant's assigned position was blanked on that day.

The Carrier violated the Agreement when it assigned the occupant of a regularly assigned six-day position, thereby blanking that position, to fill a temporary vacancy in a regular seven-day position necessary to the continuous operation of the Carrier. Awards 3770, 3514, 2282. Award 3770 is squarely in point on the facts and the applicable rules involved. We adhere to the reasoning of that Award with the result that an affirmative award is in order. See also Award 4499.

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 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 as charged.

AWARD

Claim sustained.

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.