

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

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

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

(a) Carrier violated the rules of the Clerks' Agreement when it required and permitted Mr. C. L. Maus, Roundhouse Laborer, Winslow, Arizona, to perform clerical work covered by the scope and operation of the Clerks' Agreement and by such action deprived employees who hold seniority rights in that district and to this work their right under the Clerks' Agreement to perform such work; and,

(b) W. F. O'Neill shall be compensated at Shop Timekeeper rate on the basis of eight (8) hours at time and one-half rate on dates when such violation occurred, viz., December 23, 25, 26, 29 and 30, 1946, and January 2, 1947.

EMPLOYEES' STATEMENT OF FACTS: In the Mechanical Department at Winslow, Arizona, there exists three positions titled Shop Timekeeper identified by payroll numbers 113, 115 and 116, the hours of assignment being 8:00 a.m. to 4:00 p.m., 7:45 a.m. to 4:15 p.m. and 4:00 p.m. to 12:00 midnight, respectively. On the dates set forth in Statement of Claim above, the occupant of Position No. 116, with assigned hours 4:00 p.m. to 12:00 midnight, was absent from duty. Roundhouse Laborer C. L. Maus, who holds seniority rights under the Shop Crafts' Agreement, was instructed by the Carrier to perform the duties of Position No. 116 notwithstanding the fact that qualified employees holding seniority rights to such work were available, ready and willing to perform same on an overtime basis as had always been the custom and practice in similar circumstances.

Mr. W. F. O'Neill, whose assignment as Shop Timekeeper immediately preceded the hours of assignment of Position No. 116, was available and willing to perform such overtime service but was denied this right whereupon he submitted overtime tickets to the Master Mechanic claiming payment on the basis of eight (8) hours at time and one-half for each day involved. These tickets were declined by the Master Mechanic on the grounds that the vacancy on Position No. 116 on each of the dates in question was filled in accordance with Article III, Sections 9 and 10-a.

POSITION OF EMPLOYEES: This dispute arose as result of Carrier's action in using a Roundhouse Laborer at Winslow, Arizona, to protect vacan-

pensated at punitive time and one-half rate for time not worked on December 23, 25, 26, 29 and 30, 1946 and January 2, 1947. Without prejudice to its aforesaid position that the instant claim is without support in the rules of the current Clerks' Agreement or otherwise, the Carrier further asserts that the Third Division has repeatedly held that time not actually worked cannot properly be treated as overtime and paid for at punitive rates, but that compensation under such circumstances must be limited to the pro rata rate—see Awards 3587, 3876, 3890, 3910, 4037, 4046, 4179 and many others. The instant claim, moreover, contemplates double payment covering the thirty-minute period 3:45 P.M. to 4:15 P.M. on each of the aforementioned dates.

(Exhibits not reproduced).

OPINION OF BOARD: There is no question, in fact the parties agree, that the applicable rules herein involved as well as the controlling facts are for all practical purposes the same as those dealt with and passed upon in Award 4962, this day adopted, the principal difference, so far as facts are concerned, being a difference in dates, the name of the claimant and the involvement of but one position. Therefore, based upon such Award the claim in this case is sustained with directions that claimant be compensated in an amount equal to the rate of pay the regular occupant of the position in question would have received had he worked it pursuant to his regular assignment.

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 Carrier violated the Agreement.

AWARD

Claim sustained. Compensation allowed as per the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.

DISSENT TO AWARD 4963, DOCKET CL-5020

This Award relies entirely upon Award 4962.

The dissent to that Award is equally applicable here and, by reference thereto, is made a part of this dissent.

/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ C. C. Cook