

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 ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY—COAST LINES**

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 routine clerical work covered by the scope and operation of the Clerk's Agreement and by such action deprived employes who had seniority rights in that district and to this work their right under the Clerks' Agreement to perform such work; and

(b) E. R. Gardner shall be compensated at the rate of \$9.64 per day on the basis of eight (8) hours per day at the time and one-half rate on January 11, 1947.

EMPLOYEES' STATEMENT OF FACTS: In the Mechanical Department at Winslow, Arizona, there exists a position titled Shop Timekeeper identified by payroll number 115, the hours of assignment being 7:45 A.M. to 4:15 P.M. with a Saturday rest day. On Saturday, January 11, 1947, the assigned relief employee, who regularly relieves the incumbent of this position on his rest day, was being used to fill another vacancy. Instead of filling the rest day vacancy on this position by using the regular incumbent thereof, there being no qualified off-in-force-reduction employes available, Roundhouse Laborer C. L. Maus, who holds seniority rights under the Shop Crafts' Agreement, but who holds no seniority rights under the Clerks' Agreement, was instructed by the Carrier to perform the duties of Position No. 115 on that date.

Mr. E. R. Gardner, who was the regular incumbent of Position No. 115 on this date, was available and willing to perform this rest day service on his own position but was denied this right, whereupon he submitted overtime ticket to the Master Mechanic claiming payment on the basis of eight (8) hours at time and one-half for January 11, 1947. This ticket was declined by the Master Mechanic on the grounds that the vacancy was filled in accordance with Article III, Sections 9 and 10-a.

POSITION OF EMPLOYEES: This dispute arose at Winslow, Arizona, when on January 11, 1947, the Carrier used a Roundhouse Laborer, who is neither a regular assigned relief employee nor an off-in-force-reduction employee, to perform rest day relief on Position No. 115 titled Shop Timekeeper, the

employee, along with five other clerical employees at Winslow, were being regularly relieved on their assigned rest days by Mr. Maus who was protecting a temporary vacancy on the regular rest day relief position, and it will thus be apparent that the claimant employee, Mr. Gardner, had no right to protect or work his rest day on January 11, 1947 under Item 4 of the letter of agreement. A careful analysis of the April 15, 1943 letter of agreement and particularly Item 4 thereof will plainly reveal that it lends no support whatever to the Employees' claim in this dispute and further that the Employees are attempting to read a requirement into Item 4 which is neither contemplated nor provided for therein.

In conclusion, the Carrier reiterates that the instant claim is without support in the rules of the current Clerks' Agreement or otherwise. It is in fact nothing more than an attempt to repudiate and nullify the Carrier's right to fill temporary vacancies without regard to the agreement rules, as specifically provided for in Article III, Section 10-a of the current Clerks' Agreement. The instant claim should be denied in its entirety.

The Board's attention is here again directed to the fact that the Brotherhood's claim contemplates that the complaint E. R. Gardner shall be compensated at punitive time and one-half rate for time not worked on January 11, 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Position No. 115, titled Shop Timekeeper, with assigned hours of 7:45 A.M. to 4:15 P.M., daily except Saturday, exists in the Mechanical Department at Winslow, Arizona. The position is within the Clerks' Agreement and a clerk is regularly assigned to it. On Saturday, January 11, 1947, the relief employee assigned to work the rest day (Saturday) of this position, was used to fill a vacancy on another position. There was no qualified off-in-force-reduction employee available to fill the position. Carrier thereupon assigned Roundhouse Laborer C. L. Maus, an employee with the Shop Crafts' Agreement and holding no seniority rights under the Clerks' Agreement, to work the relief day of Position No. 115 on that day. The Organization contends this was a violation of the Agreement in that the work was not assigned to an employee under the Clerks' Agreement.

The Carrier asserts that Roundhouse Laborer Maus was properly assigned under Article III, Section 10-a, current Agreement, providing:

"Section 10-a. Vacancies of fifteen (15) calendar days or less duration shall be considered temporary and, if to be filled, shall be filled (1) by recalling the senior qualified and available off-in-force-reduction employee not then protecting some other vacancy; (2) if there is no such off-in-force-reduction employee available, by advancing a qualified employee in service at the point who makes application therefor. If neither of these alternatives produces an occupant for the vacancy, it may be filled without regard to these rules, but employees holding seniority in Class 3 on the same seniority district, whether in regular employment or otherwise, shall be given preference in accordance with Section 8-e of this Article. Individual Class 3 employees shall not be compelled to protect such temporary service, but those accepting it will do so at the rate applicable thereto and without penalty to the Company, either through payment of expenses or otherwise. If taken from regular employment, they will return thereto when released from the temporary vacancy."

This very question involving the same rule on the same Carrier has been interpreted by this Board. Award 4962. We reaffirm the reasoning of that award and sustain the claim at the pro rata rate of the position.

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 Agreement was violated.

AWARD

Claim sustained at pro rata rate.

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 4971, DOCKET CL-4879

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