

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT 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 Ogden Union Railway and Depot Company and/or its Officers violated the terms of the existing agreement

(a) By failing or refusing to call Mr. Roy Lauck, Jumbo Clerk, to work four hours, overtime on August 30, 1948 and 6 hours overtime on September 1, 1948 and

(b) The Company shall now compensate Mr. Lauck for 4 hours time at punitive Jumbo Clerk rate for August 30, 1948 and for 6 hours time at the punitive Jumbo Clerk rate for September 1, 1948.

EMPLOYEES' STATEMENT OF FACTS: Mr. Roy Lauck established seniority with the Ogden Union Railway and Depot Company August 31, 1941 in employment within and under the jurisdiction of the agreement existing between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and the aforementioned and was on the dates of this claim, (August 30, 1948 and September 1, 1948) regularly assigned to 4:00 P. M. to 12 Midnight Jumbo Clerk position.

On the dates of claim there were three regularly assigned jumbo clerks working each of the three shifts from 12:01 A. M. to 8:00 A. M., from 8:00 A. M. to 4:00 P. M. and from 4:00 P. M. until midnight a total of nine positions or employees in all. We shall hereafter refer to the midnight shift as that being from 12:01 A. M. until 8:00 A. M.; to the day shift as the assignment from 8:00 A. M. until 4:00 P. M., and to the afternoon shift as the assignment from 4:00 P. M. until 12 midnight.

Because of increased work need arose to call additional help from 12 o'clock noon until 4:00 P. M. on August 30th and again need arose to call additional help to work from 10:00 A. M. until 4:00 P. M. on September 1, 1948. The need for this extra or overtime work appeared on the day shift and continued up to and directly connected with the afternoon shift which began work at 4:00 P. M.

Employees assigned each shift on Jumbo Clerk position August 30, 1948 are as follows:

(Exhibits not reproduced.)

OPINION OF BOARD: On the dates involved in this claim there were three shifts of three employees each working around the clock as Jumbo Clerks. On each of the dates occasion arose for the working of overtime on the 8:00 A. M. to 4:00 P. M. shift. An employee junior to Claimant holding a regular assignment on the 4:00 P. M. to midnight shift (the same shift to which Claimant was regularly assigned) was called to perform the overtime work.

The Employees contend Claimant as the senior employee should have been called to perform the overtime work. Carrier asserts that the assignment of the junior employee was proper under Rule 11 of the applicable Agreement which requires that in working overtime before and after assigned hours, employees regularly assigned to the class of work for which overtime is necessary shall be given preference.

The Division has had occasion to consider the effect of rules identical to Rule 11 here involved in the selection of employees regularly assigned to class of work for which overtime is necessary. It has been pointed out that this rule should not be confused with that which gives overtime work to the occupant of the position out of which it grows. In the instant dispute it is clear that the overtime is of a type which is reserved to the class and not to the incumbent of a certain position. Where there are two or more employees of the class entitled to preference to the work under Rule 11, the senior employee has the prior right to the work. (Awards 2341, 2426.) It is the Carrier's duty to police the Agreement and in such cases call the senior employee to perform the work. It did not do so in this instance and hence a sustaining award is indicated.

Carrier's contention that Mr. Lauck is not a proper Claimant because he was not the senior man on September 1, 1948, has been passed upon before by this Board. The fact that the claim presented may have been made by another who had a prior right to it is no proper concern of the Carrier. (Award 4022.) It can only be required to pay once.

The right to perform work is not the equivalent of work performed insofar as the overtime rule is concerned. The proper penalty in this instance is the pro rata rate of the position for the number of hours lost because of Carrier's failure to properly apply the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim (a) sustained. Claim (b) 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 19th day of March, 1951.