

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement at Hornell, N. Y. when it required Employee C. I. House, Requisition Checker, General Stores Office, Hornell, N. Y. to suspend work on his regular position and work position of Leading Invoice Clerk, General Stores Office, Hornell, N. Y. depriving Employee K. J. Klos, the regularly assigned incumbent thereof, of overtime work on his position, and,

1. That C. I. House be paid an additional day at the pro rata rate of his position for February 21, 23, 24 and 25, March 1, 2, 3, 4, and 5, 1949, the days on which he was withheld from his assigned position, in addition to the amount he has actually been paid, and,

2. That K. J. Klos, be compensated for an equal number of hours at one and one-half times the regular rate of his position for overtime he was denied on his assigned position. File 889.

EMPLOYEES' STATEMENT OF FACTS: The Claimants in this case are employees holding regular assigned positions in the office of the Manager of Stores, Hornell, N.Y. covered by the Scope of the Clerks' Agreement having seniority on Roster "A" Seniority District No. 11.

Claimants are assigned to position of Requisition Clerk and Leading Invoice Clerk, the duties of which positions are set forth in Employees' Exhibits "A" and "B" attached.

For some time prior to February 21, 1949, employees were not divorced from their regularly assigned duties during their regular tours of duty. Prior to February, 1949, the work on position of Leading Invoice Clerk, had increased in volume to such an extent that the incumbent of the position, K. J. Klos, was unable to perform it during the regular hours of his assignment with the result that there was a heavy accumulation of uncompleted work which could only be performed by the incumbent by working overtime. Instead of working the incumbent overtime to clear up the accumulation the Carrier instructed Mr. C. I. House, Requisition Checker, to suspend work on his position and perform work on the Leading Invoice Clerk's position. See Employees' Exhibit "C" attached.

The work performed by Mr. House was an integral part of the work of Mr. Klos' position. The Employees attach as their Exhibit "D", a list

that rule then the rules and years of accepted practice and custom have suddenly undergone a drastic transformation without consent or knowledge of the Carrier and without the benefit of negotiation or understanding. This would be an absolute departure from the practical to the fantastic. It is not reasonable to think, let alone say, that any such intent was ever contemplated, and the rule should not be given the meaning the Employees are here requesting.

The dispute herein involved is not one where an employe has been required to leave his work and devote 8 hours or less working on another job, the hours of which are entirely outside or partly outside of his regular assignment, which was the exact and sole cause for the promulgation of the absorption of overtime rule. But is a case where one employe simply assisted another employe in the same group, in the same seniority district, both of whom were assigned the same working hours.

The Employees will no doubt look to Awards subsequent to Award 3417 for support of their position which have come about since the Referee in Award 3417 misapplied the principle that had been so clearly established by the earlier Awards discussed hereinbefore. However, your Honorable Board can find relief in Awards 4893, 5306, 5331 and 5332 and others, each of which applies the proper interpretation of the absorbing of overtime rule as it was understood by everybody for the past 25 to 30 years.

We submit that Award 3417 and subsequent Awards sustaining the principle involved in that case are completely unsound for the reason that the absorption of overtime rule was never intended to apply where one employe is used to assist another employe during his regular hours of assignment.

The Carrier has given the history of the absorption of overtime rule and has established the real meaning and intent thereof. A sustaining Award in this case would only perpetuate the gross injustice already heaped upon some other Carriers and would do further violence to the rule itself. The Employees are here attempting to force this Carrier to accept a new rule without its consent and without due process of negotiation as provided for in the Railway Labor Act.

The Carrier has shown that under the applicable Agreement between the parties to this dispute, the Claimants were not required to suspend work during regular hours to absorb overtime and no violation of the basic intent of Rule 21 has occurred.

It is, therefore, respectfully submitted that the claim is without merit and should be denied.

Without prejudice to Carrier's position that there is no merit to the Employees' claim it is noted that the claim is for a double penalty. Your Honorable Board has consistently denied double penalty claims. Compare Awards 2695 and 2859.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves a claim by the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement by allegedly requiring C. I. House, a Requisition Checker at Hornell, N.Y., to suspend work on his own position on certain named dates in order to perform the work of Leading Invoice Clerk with the result that K. J. Klos, incumbent Leading Invoice Clerk lost overtime work which was rightfully his to perform.

While the Petitioner contends that various rules were violated by the Respondent Carrier, primary emphasis is placed upon the alleged violation of Rule 21, which reads as follows:

"Employees will not be required to suspend work during regular hours for the purpose of absorbing overtime."

It appears from the record that on certain days during February and March, 1949, Requisition Checker House was asked to assist Leading Invoice Clerk Klos in the performance of certain work which is normally performed by the Leading Invoice Clerk. Petitioner alleges that this constituted a suspension of work for the purpose of absorbing overtime which would otherwise have been required on the Leading Invoice Clerk position.

There is a certain amount of controversy between the parties with respect to the reason why House was instructed to assist Klos. However a resolution of these particulars is not essential for the disposition of the case. The primary task of the Division is to determine whether the relevant rules were violated by the Carrier in view of the particular facts revealed by the record before us.

Issues similar to the one posed here have been before the Division many times. It is not necessary here to analyze fully the many awards which have been made by the Division on the absorption of overtime issue. The Carrier argues that Awards 3417 and 3418 represented a modification of the Board's approach to this issue wherein the Referee used the phrase "required to suspend work on his regularly assigned position". (Emphasis added). The Carrier argues further that Awards 5306, 4983 and 5331 represented a return to the interpretation of the rule supported by the Board prior to Awards 3417 and 3418.

In the instant case the decision hinges not on these alleged differences in the Division's various awards cited above, but rather upon the particular facts in this case. The facts here dictate a denial award even on the basis of the language in Award 3417. This record does not substantiate the charge that Claimant House was required either to "suspend work", or to "suspend work on his regularly assigned position". At most the record indicates that House was asked to assist Klos from time to time. But the record does not show that he suspended work on his own position when such assistance was given.

The Petitioner contends that had Claimant House not given assistance to Klos overtime would have been required on the Leading Invoice Clerk position. There is nothing in the record before us to justify such a conclusion.

A recent Award, 5727, is cited in support of the claim in this case. While the issue involved in that case is distinguishable from the instant case the Referee in 5727 stated "By this we do not mean the holder of job may not either voluntarily or by direction 'lend a hand' * * *".

In the instant case before us the assistance of House was more in the nature of "lending a hand", than suspending work as contemplated by Rule 21 of the Agreement.

Under the facts revealed by this record an affirmative award is not justified.

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 amended June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of June, 1952.