

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, 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 rules of the Clerks' Agreement at Elko, Nevada, by requiring First Assistant Timekeeper F. F. Strange, Assistant Timekeeper S. L. Hernandez, Assistant Timekeeper J. L. Murphy, Mechanical Clerk K. K. Clark and Roadway Clerk C. A. Pacini to suspend work on their regular assignments for their entire shift on July 10, 11 and 12, and for a half day on July 13, 1950, in order to destroy old records and clean up the file rooms, consisting of the old ice house, a box car and a new file storage building known as the tin shed.

(b) Messrs. F. F. Strange, S. L. Hernandez, J. L. Murphy, K. K. Clark and C. A. Pacini now be compensated for three and one-half days' pay each in addition to the amount they have already received, at the rate of their regular assignments.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case are as follows: On Friday, July 7, 1950, the above mentioned clerks were instructed to report for work the following Monday in old clothes in order to destroy records and clean up the file rooms. Three and one-half days were consumed in this work during which time their assigned positions in the Superintendent's Office were blanked.

POSITION OF EMPLOYEES: The work involved in destroying records and cleaning up the file rooms was not work regularly assigned to the claimants. Superintendent Duggan, in his letter to Mr. F. F. Strange, Division Chairman, under date of August 8, 1950, stated that this work was only required on May 27, 1944, May 26, 1945, July 13, 1946, May 13, 1948 and July 10 to 13, 1950. Various male clerks destroyed the records and straightened up and cleaned the file storage rooms on the dates stated, as they did on all the occasions prior to May 27, 1944." Instead of utilizing the services of these employes on an overtime basis to perform the work in question, the Carrier instructed them to suspend work on their regularly assigned positions in order to absorb overtime that it would otherwise have been necessary to pay them to perform on an overtime basis. It is the position of the employes that this

tion of overtime' rule was violated. In both situations the work involved was not assigned to the positions of the claimants."

As in that Award (1) the Carrier did not require these employees to discontinue work on their regular positions and fill vacancies on other positions when otherwise the Carrier would have had to pay overtime to fill the vacancies; or (2) the Carrier did not require Employees to suspend work on their assignments and perform work on other positions which work would otherwise have had to be performed on an overtime basis. There was no overtime required and there was no necessity for working any overtime. None of the Employees here involved were adversely affected. They were each paid for their regular assignment and none of the work required was other than incidental to their regular duties.

To Carrier it is inconceivable that the moving of these records, etc., which was all done on a total period of seven and one-half days during seven calendar years, can be construed as creating positions or vacancies requiring bulletining assignment and all of the other ramifications advocated by the Employees in this instance.

To allow this claim would be to place a wholly unwarranted imposition upon the Carrier and you are most strongly urged to deny same.

All of the above has been presented to the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: The facts are not in dispute. On the days named in the claim Carrier required Claimants to move clerical files from their temporary location to a permanent location and in the process of so doing files not longer needed were destroyed.

Petitioners contend that during this time Claimants' assigned positions were blanked. Cited in support of the claim are Rule 5:

"Proper designation and classification of the duties and work assigned each position are necessary and shall be adhered to;

"The General Chairman shall be notified in writing of any substantial change in the assigned duties.

and Rule 20 (e):

"Employee shall not be required to suspend work during regular hours to absorb overtime."

and stating work of this nature only required once in a year or once in two years cannot be considered as part of the regularly assigned positions. Also that laborers' work was performed and no showing is made that the General Chairman was notified that a change in assigned duties was made as required by the above cited Rule 5. Cited in support of the claim are Award 4641 and other rules of the agreement, also numerous other awards of this Division of the Board.

Respondent Carrier states that it has the right to have employees perform work which is incidental to their positions; that the work was clerical and was assigned prior to its performance and no provision of the Agreement explicitly or impliedly prohibits the Carrier from so assigning this work to Claimants, citing Awards 2491, 4304, 2132, 5897 and 6001 with others in support of the position taken; also that Claimants performed these same duties periodically since 1944; that the absorption of Overtime rule is not applicable where the work is assigned to Claimants and would not have otherwise been performed on an overtime basis.

The position of Petitioner is not considered to be well founded in this claim. The work apparently must be construed to be incidental to clerical positions under facts such as presented here. And as the same has been performed on a periodical basis since 1944 this has been the construction placed on the cited rules by the parties. We find no violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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 claims are denied in accordance with Opinion.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.