

Award No. 6687
Docket No. CL-6255

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

William M. Leiserson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

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

(a) Carrier violated the current Clerks' Agreement on Saturday, April 22, 1950, at Fort Worth, Texas, when it did not call the senior available Stenographer to perform stenographic work that was performed on overtime basis that day; and,

(b) Mrs. Sally A. Hamilton shall be paid two (2) hours and thirty (30) minutes at overtime rate on April 22, 1950.

EMPLOYES' STATEMENT OF FACTS: Late Saturday afternoon, April 22, 1950, the services of several employees were required in the Superintendent's Office at Fort Worth, Texas, to perform certain overtime work in connection with getting out a special notice to all officers and all employees of the Carrier concerning the then pending Firemen's strike. Senior Clerk W. H. Green was called and apparently instructed to call Mr. W. F. Shipp, Station Clerk, and Mr. Glenn Horn, Steno-Clerk, to assist him in the performance of this work. These three employees reported for duty and worked from 7:00 P. M. to 9:30 P. M., April 22, 1950.

Mrs. Sally A. Hamilton, whose seniority dates from July 3, 1943, was the senior qualified and available off duty stenographer in the Superintendent's Office Seniority district at Fort Worth on the date in question and should have been called to perform this special stenographic work instead and in the place of Steno-clerk Glenn Horn, whose seniority dates from November 9, 1949.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date October 1, 1942, and supplemental agreement bearing effective date September 1, 1949, in which the following rules appear:

ARTICLE III

"Section 1-a. Seniority districts shall be as per Appendix 'A' hereto."

"Section 2. Seniority begins at the time the employees' pay starts, on the seniority district and in the class to which assigned, excepting

CONCLUSION

In conclusion the Carrier submits that the claim of the Employees is without support under the current Clerks' Agreement and should be denied for the following reasons:

(1) The work involved was special work, not assigned to any certain position in the office.

(2) No rule in the current Clerks' Agreement requires that the claimant be used preferentially for overtime work.

(3) A sustaining award would have the effect of revising the Agreement, which the Board has repeatedly held it does not have the authority to do.

All that is contained herein has been both known and available to the employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: At the Superintendent's office in Fort Worth, Texas, there are three stenographic positions covered by the Clerks' Agreement. The title of one position is Stenographer; the other two are designated as Stenographer-Clerk. All have a Monday through Friday work-week, with rest days on Saturday and Sunday.

On Saturday, April 22, 1950, the Carrier required some special work to be done in the evening, which work did not fall exclusively within the regular assignment of either Stenographer-Clerk. The Carrier called the one who was junior in point of seniority, and he worked from 7:00 to 9:30 P.M. at the overtime rate. The other Stenographer-Clerk, who has 6 years more seniority, claims that she should have been called for this work and is entitled to compensation at the same rate. There was no off-in-force or extra employee available.

The Employees rely on the seniority rules of Article III of the Agreement to justify the claim, and also on the rule governing work on unassigned days, Article VII, Section 1 (e). The Carrier contends that the latter rule is not applicable because the call was for special work not included in either assignment, and that the seniority rules do not cover such special work.

We agree with the Carrier that "The question involved in this claim is whether special work performed on a rest day of the employees involved, and not the duty of any particular position, must be performed by employees on the basis of relative seniority." But we find that the answer to this question is — yes, it must be.

The employees involved hold their positions in the Superintendent's office by reason of their seniority. The special work involved was office work covered by the Agreement. It was required to be performed on a day not part of any assignment, since Saturday was a rest day for the assigned employees. Section 1 (e) of Article VII governs work on such days, not regular work or special work, but any work required, such as is done on the regular assignments. In this case it means any clerical work, and the Carrier recognized this by calling one of the Stenographer-Clerks, no extra off-in-force reduction employee being available. The one it called had the least seniority in the office.

That it was obligated to call the senior employee is evident from the plain language of Section 1 (e). This rule says, first, that work on an unassigned day may be performed "by the senior qualified and available off-in-force reduction employee" who would otherwise not have 40 hours work in the week. (Emphasis added.) Obviously, if it did not use the senior such employee, it would be violating this provision. Then the rule goes on to say:

"In all other cases by the regular employee." This regular employee is, of course, senior to off-in-force reduction employees, and the work is reserved to him if he performs the same duties on his regular assignment that are required on the unassigned day.

Should the regular employee not be available, however, it is well established that other regular employees holding similar assignments are entitled to the work in the order of their seniority. In the present case the "special work" cannot be identified with any one assignment. But it is not unusual for work on unassigned days to require performance of duties different from any particular assignment. This Division has had many such cases, and we have held that under those circumstances the senior regular employee of any who perform similar duties is entitled to the work on his rest day (e.g. Award 6523).

We think both Article III and Section 1 (e) of Article VII are applicable to this dispute, and both were violated by the Carrier. Accordingly, the claim must be upheld.

As to the compensation, the Carrier argues that this should be at the pro rata rate because of "the Board's well established principle" when a penalty for a violation is imposed and the claimant did not actually do the work. In fact, however, the Board has two well established principles. In some cases, the pro rata rate is awarded, in others the overtime rate which the work requires is granted. We are of the opinion that on the facts in this case, the second policy is more appropriate because claimant was denied the right to do the work that plainly belonged to her by reason of her seniority.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1954.