

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, on October 11, 13, 14, 15, 18, 20, 21 and 25, 1950, it required Mr. Mike W. Otterbourg, Train Clerk, Spencer, North Carolina, to suspend work on his regularly assigned position and perform the duties of Night Chief Clerk for the purpose of having the effect of absorbing overtime.

(b) Claimant Otterbourg shall be compensated at his pro rata rate of \$12.18 per day for each of the days involved.

EMPLOYEES' STATEMENT OF FACTS: Claimant Mike W. Otterbourg is a Clerk in the employ of the carrier with a seniority date of March 7, 1947. Claimant is regularly assigned to the position of Train Clerk. The hours of Claimant Otterbourg's assignment are from 11:00 P. M. to 7:00 A. M., the rest days being Mondays and Tuesdays. The rate of pay of Claimant Otterbourg's position is \$12.18 per day.

On the days stated in the Statement of Claim, Claimant Otterbourg was required by the Carrier to vacate his regularly assigned position and assume the duties and responsibilities of the position of Night Chief Clerk, regularly assigned to Mr. C. H. Bias, rate \$12.51 per day. The assigned hours of Night Chief Clerk are 11:00 P. M. to 7:00 A. M., the rest days being Wednesdays and Thursdays.

On October 13, 14, 15, 16, 17, 20 and 21, Mr. Bias was on vacation. October 11, 18 and 25 were rest days of the position regularly assigned to Mr. Bias. Claimant Otterbourg was allowed the rest days of his regularly assigned position, i. e., Mondays and Tuesdays. On those days, i. e., October 11, 18 and 25, which were rest days of the position regularly assigned to Mr. Bias, Claimant Otterbourg was required to work the Night Chief Clerk position in lieu of the position being filled from the Yard Clerk extra Board as is customarily done on the rest days of the position regularly assigned to Mr. Bias.

ment not containing a penalty provision or authorizing the payment of two days' pay for one day's work, the Board cannot award the monetary payment claimed.

For all the reasons given, the claim is **not** supported by the effective collective bargaining agreement here in evidence, is wholly without merit and therefore should be denied. Carrier respectfully requests the Board to so hold.

All relevant facts and arguments involved in this dispute have heretofore been made known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a regularly assigned train clerk at Spencer, North Carolina, hours 11:30 P. M. to 7:00 A. M., worked the position of Night Chief Clerk on the days involved in the claim. On such days the extra clerks standing for service on the extra board were not qualified to fill the duties of the Night Chief Clerk's position but were qualified to work the train clerk's position. Wednesday, October 11, 1950, was a rest day of the Night Chief Clerk's position. On the other days involved in the claim the incumbent of the Night Chief Clerk's position was on vacation.

The Employee's claim here is based upon the provisions of Rule 15 (c) of the applicable Agreement which reads as follows:

"(c) Employees will not be required to suspend work during regular hours to absorb overtime, except as otherwise provided in Rule 8."

In the main, Carrier resists this claim on the basis of practice under the Agreement cites Rule 5 (d) and 4 (g) (2) as supporting its action in this instance and cites as well a settlement reached with the General Chairman indicating that compensating an employe under Rule 21 (a) (Preservation of Rate) fully satisfies the requirements of the Agreement when an employe is required to work an assignment other than his own.

Rule 5 (d) provides as follows:

"Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge.

"Note: When such temporary vacancies are filled, either for the entire period or portion thereof, as provided in Rule 4-(g), preference for such work shall be given to employes holding seniority in group or class in which vacancy occurs, but this privilege does not extend to employes in other groups or classes unless an employe holds seniority in the group or class in which vacancy occurs."

Rule 4 (g) (2) provides as follows:

"Except as provided in sections (e) and (f) of this rule, and in Rule 5-(d), preference for extra clerical work on the respective seniority districts will be given to the available senior qualified furloughed clerical employe on such districts, subject to the following: * * *

"(2) It is not intended to prevent rearrangement of forces to avoid the filling of positions, but in such rearrangement the provisions of Rule 21, paragraph (a), shall be observed."

Implicit in Rule 5 (d) and 4 (g) (2) is the recognition of the right of the Carrier to rearrange the force to meeting situations arising because of the existence of temporary vacancies and to pay such persons whose assignments are rearranged in accordance with the provisions of Rule 21 (a). That the parties so recognize this as being the effect of the rules is evidenced by a settlement reached on the property when in November of 1950 the General Chairman cited Rule 21 (a) in support of a claim for a record clerk who was removed from his regular assignment and required to work as a train clerk. The General Chairman then stated that Rule 21 (a) never contemplated that an employee be removed from his regular assignment or from one location or office to another without being compensated for same in accordance with the provisions of Rule 21 (a). He asked for and received the difference in the two rates of pay for the work performed on the position of Train Clerk on the date in question. (See also Award 4533 with respect to the effect of Rule 5 (d).)

Upon the facts as they appear in this docket we can come to no other conclusion than that the Carrier was acting within the Rules and satisfied the provisions of the Agreement by paying the claimant in accordance with Rule 21 (a). This conclusion does not mean that under this Agreement the Carrier may arbitrarily require regularly assigned employees to work assignments other than their own. Sufficient cause is here shown to indicate that an urgent situation existed justifying the rearrangement of the force. The many Awards on the "Absorption of Overtime" Rule cited by the employees have no application here because of differences in facts and in the other provisions of the Agreements involved.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of November, 1954.