

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 March 26 and 27, 1951, it required Mr. Leo Sowers, Jr., Train Clerk, Spencer, North Carolina, to suspend work on his regularly assigned position and perform the duties of Assistant Chief Caller for the purpose or having the effect of absorbing overtime.

(b) Claimant Leo Sowers, Jr., shall be compensated at the pro rata rate of his position for the two (2) days in question.

EMPLOYEES STATEMENT OF FACTS: Claimant Sowers is a Clerk in the employ of the Carrier at Spencer, North Carolina. His seniority date is December 9, 1937, and his regularly assigned position is Train Clerk, hours of assignment 3:00 P.M. to 11:00 P.M. Claimant's rate of pay is \$12.18 per day.

On March 26 and 27, 1951, Claimant Sowers was not permitted to perform the duties of his regularly assigned position but instead, was required by the Carrier to perform the duties and assume the responsibilities of Assistant Chief Caller, the regularly assigned Assistant Chief Caller being absent. The duties of Claimant Sowers' position were performed by an extra Board employee.

Copies of correspondence in connection with claim are attached hereto and identified as Employees' Exhibits "A" through "J" inclusive.

POSITION OF EMPLOYEES: There is in evidence an amended Agreement between the Parties bearing effective date of October 1, 1938, from which the following Rules or Sections of Rules are quoted for ready reference:

Seniority—Rule 4: (First paragraph of Section (a) revised effective July 16, 1943.)

(a) "Except as to employees covered in Groups 4 (c) and 5, seniority will be effective and will date from the last time entering

dispute; that it is not the Board's function to make rules for the parties, or to change or set aside existing rules.

The carrier has shown (1) that claimant was used and compensated as provided in the effective clerical agreement, (2) that the rules cited by the Brotherhood were not violated, are not applicable in cases where the carrier rearranges the force when temporary vacancies occur, and (3) that Board awards cited by the Brotherhood in the handling of this case on the property involves rules different from those in effect between the parties to this dispute and do not support the claim. For the reasons stated, the claim should be denied in its entirety and carrier respectively requests that the Board so hold.

All pertinent facts and data used by the carrier in this case have heretofore been made known to the Brotherhood representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to that involved in Award No. 6819. For the reasons stated in our Opinion and Findings in that Award, we find that this claim should be denied.

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, find 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.