

Award No. 7022

Docket No. CL-7058

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Agreement between the parties on the following dates (all being Saturdays) with respect to the performance of work of Messenger, Freight Department:

- (1) February 10, 1951, when it required R. D. Morgan, Janitor-Caller, to perform certain messenger work, instead of calling the regular Messenger;
- (2) February 17, 24 and March 3, 1951, when it required, directed or permitted F. P. Swenton to perform certain messenger work instead of calling the senior qualified available employee on that date having seniority as a Messenger;
- (3) March 10 and 17, 1951, when G. W. Turner, Freight Agent, performed certain messenger work instead of calling the regular Messenger and;

(b) The Carrier pay the employees who should have been called to perform the work of Messenger on the above dates as follows:

- (1) February 10, 1951, F. P. Swenton, regular incumbent of Messenger position, one day at Messenger rate of \$10.668 per day;
- (2) February 17, 24 and March 3, 1951, Dewey Gentry senior qualified available employee holding Class 2 seniority, three days at the rate of Gentry's position \$12.426 per day; and
- (3) March 10 and 17, 1951, T. V. Brown, regular incumbent of Messenger position, two days at Messenger rate of \$10.668 per day.

EMPLOYES' STATEMENT OF FACTS: The facts in the background of this case are associated with Award 5195, Docket CL-5160, which see. One of the claims of the Committee in that case was that the Carrier violated the agreement when, subsequent to the effectuation of the Forty-Hour-Week Sep-

period, shall be allowed a minimum of three (3) hours for two (2) hours of work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

Employees notified or called to perform work on rest days and holidays shall be paid a minimum of eight (8) hours at time and one half."

"RULE 40

ABSORBING OVERTIME

Employees will not be required to suspend work during the regular hours to absorb overtime."

These rules do not have application in claim herein progressed by the employees. Further, this is not an abolishment of a position and distribution of the remainder of the work to other positions or the requirement of the performance of a major part of the work previously done on Saturdays, nor is it recurring work that arises with substantial regularity. There will be no showing of subsequent claims arising after the last date filed for in the instant claim.

Claims (b) and (b) should be denied.

All of the above has been handled with the Organization either in conference or in correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier has tendered no defense on the merits at any stage of the progress of these claims.

The argument is that the violations of the Agreement are trivial and insignificant. We tread on dangerous ground if we remit penalties based upon our notions of triviality or insignificance (see Award 1611) particularly where, as here, the violations occurred on the heels of Award 5195.

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

The Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.