

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, on Friday, January 15, 1954, it directed and required regularly assigned Recheck Clerk Richard Holtman, rate \$16.54, assigned occupant of Position 16/857 in the Recheck Division, Sixth Floor, Missouri Pacific Building, to suspend work on his own assigned position as Recheck Clerk during his regular assigned hours, and go to the Fifth Floor and work in the Interline Division, placing divisions on interline account abstracts which was an overload or overflow of work normally and regularly attaching to the position of Senior Interline Division Clerk John B. Garvey, Group 7 of the Interline Division, in order to absorb overtime, that is, prevent Claimant Clerk John B. Garvey from working overtime, a Carrier action in violation of Rule 25 (f) of the Clerks' Agreement;

2. Senior Interline Division Clerk John B. Garvey shall be compensated for 7 hours at the punitive rate of \$3.00 per hour, amount \$21.00, account Carrier's Action in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Clerk John B. Garvey at the time this dispute arose was a regularly assigned Senior Interline Division Clerk, rate \$15.98 per day, in Group 7 of the Interline Division, a sub-division of the Auditor Freight Receipts Office and Clerks Class "A" and "B" seniority district and roster, which sub-division is located on the Fifth Floor, Missouri Pacific General Office Building, St. Louis, and among other positions, Group 7 consists of a supervisor, Assistant Supervisor, some 10 Group Heads, 7 Assistant Group Heads, approximately 23 Senior Interline Division Clerks, 7 Junior Interline Division Clerks.

Clerk Garvey is listed on the seniority roster with a date of February 9, 1943.

Clerk Richard Holtman at the time this dispute and claim arose was a regularly assigned Recheck Clerk, rate \$16.54 per day, which position attached

Here is what the rule says.

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

Here are the facts.

Both Holtman and the claimant worked all of the eight hours of their regular assignments.

There was no overtime absorbed because no overtime was worked in connection with this incident.

Therefore, the position of the Carrier is—

First: Rule 25(f) does not apply and was not violated because none of its conditions are present in the factual situation.

Second: Under long years of practice, during which there were many opportunities to take action and during which several new agreements were negotiated, no indication was given by the Employees that they considered a move of this kind a violation of Rule 25(f).

Third: Rule 25(f) cannot be applied as contended by the Employees without nullifying Rules 28 and 31(c) because if employees cannot be moved from one position to another the provisions of Rules 28 and 31(c) cannot ever come into play.

Fourth: There would be no basis for a punitive payment even if Rule 25(f) had been violated.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based upon the rule prohibiting suspension of work during regular hours to absorb overtime and our long line of decisions, starting with Award No. 2346, wherein we uniformly held that to require an employee to suspend work on his regular position to work on another, except in emergencies, is presumed to be a suspension of work to avoid overtime. We are not disposed to overrule that consistent line of decisions. See Award No. 5578.

However such a presumption disappears upon the submission of any evidence to the contrary. Here the Carrier shows that no overtime was worked and none would have been worked by Claimant to perform the service involved, but his work would have been allowed to accumulate. The employees show that such was the defense of the carrier on the property, but they offer no evidence to rebut it. Hence the claim must be denied. See Award No. 5625.

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 herein; and

The agreement was not violated.

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 June, 1955.