

Award No. 7138
Docket No. CL-7313

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that;

(1) Carrier violated rules of our currently effective Agreement dated January 1, 1952, when on Monday, October 12, 1953, Carrier denied work opportunities to its employes incidental to unloading car CNW 7756 of merchandise (catalogues assigned to Montgomery Ward) at Portland Warehouse.

(2) The involved employes, namely V. E. Ulin, Assistant Foreman, and J. C. Johnson, Gang Checker, the two senior employes of the Warehouse force, be compensated for wage loss sustained, namely 4 hours 45 minutes and 4 hours 15 minutes respectively at the overtime rate attached by Agreement to their respective positions of Assistant Foreman, rate \$15.52 per day, and Gang Checker, rate \$14.81 per day.

EMPLOYES' STATEMENT OF FACTS: Prior to and on the claim date of October 12, 1953, the Carrier's clerical force at the Portland Warehouse, subject to the scope and operation of the Clerks' Agreement on the Station and Yards seniority roster were:

Position	Occupant	Seniority Date	Rate	Assigned Hours	Rest Days
Gen'l. Foreman	D. E. Osborne	9-7-09	16.80	7:45 am—4:45 pm	Sat. & Sun.
Chief Receiving Clk.	L. B. Banks	6-9-37	14.96	8:30 am—5:30 pm	" "
Asst. Foreman	V. E. Ulin	8-23-40	15.52	8:30 am—5:30 pm	" "
Gang Checker	E. F. Frossener	2-14-44	14.81	8:30 am—5:30 pm	" "
Gang Checker	J. C. Johnson	7-1-46	14.81	8:30 am—5:30 pm	" "
Check & Gen'l. Clk.	C. L. Ballard	9-7-37	14.96	8:00 am—5:00 pm	" "
Check Clerk	D. M. Brice	6-26-46	14.63	9:00 am—6:00 pm	" "
Check Clerk	E. Cavalli	7-29-46	14.63	8:30 am—5:30 pm	" "
Stower	F. Purpura	1-16-17	1.725	8:30 am—5:30 pm	" "
			per hr.		
Loader	A. F. Schneider	5-23-51	"	8:30 am—5:30 pm	" "
Trucker	M. Fitzgerald	7-30-47	"	8:30 am—5:30 pm	" "
Trucker	F. C. Moore	6-9-47	"	8:30 am—5:30 pm	" "

All data in support of the Carrier's position have been submitted to the Organization and made a part of the particular question here in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier has 12 employes assigned at its Portland, Oregon, Warehouse, in a five day operation, Monday through Friday. On Monday, October 12, 1953, Carrier used two men obtained through a private employment agency, to unload a car of Montgomery Ward catalogs. Claimants, two of the regularly assigned employes, contend the work was wrongfully given to persons not covered by the Agreement and they demand reparations.

The two men used worked 4'45" and 4'15" respectively. They had no contractual rights with the Carrier prior to the day they were used. Carrier asserts they were new employes used to perform an unexpected amount of work. They do not appear to have been hired and given a regular daily assignment, even for one day. We do not think the record shows that they were new employes or that they were given a seniority dating as such.

The Carrier states the carload of catalogs were stamped and sacked as U. S. mail and forwarded to Portland as freight. A request for delivery to the P. O. Department as soon as possible on October 12, 1953, was made. Carrier states that it was obliged to get the two new employes to do the work.

The record shows the number of cars of freight that arrived immediately prior to October 12. Five regular employes were used on Sunday on the time and one half rate. On Monday, October 12, the regular employes were used in handling the normal Monday volume of freight. No reason is shown why the carload of catalogs was not a part of what the Carrier designates as the normal volume. It seems to us that regular employes could have worked the car of catalogs first and continued with the remaining work even if some overtime resulted. Carrier offers no explanation of its failure to so handle the work. Certainly a total of 9 hours of work by two men, under the circumstances here shown, would not appear to constitute such a fluctuation where 12 regular employes were employed as to warrant a "farming out" of the work to persons not under the controlling agreement. We think the situation is similar to that in Award 5620.

The claim will be sustained at the pro rata rate, it being the penalty rate for overtime lost.

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 Employes involved in this dispute are respectively carrier and employes 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 at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.