

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

SACRAMENTO NORTHERN RAILWAY

STATEMENT OF CLAIM:

(a) The Carrier violated the rules of the Clerks' Agreement when it required Mr. W. A. Blue, Personal Record Clerk in the General Office at Sacramento, California, to suspend work on his assigned position on June 2 and 3, 1952, in order to perform work on the position of T&E Timekeeper on those days.

(b) Mr. Blue shall now be compensated for eight hours at his regular rate for June 2 and 3, 1952, in addition to compensation already allowed him for work performed on these dates.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Nelda DelPonte, T&E Timekeeper, resigned on short notice and left the service of the Carrier on Thursday, May 29, 1952. The following day, May 30th, was a holiday, followed by a Saturday and Sunday, May 31 and June 1. Because of the necessity of meeting payroll deadlines set up by the Accounting Department for the station and T&E payrolls, in order that paychecks be issued and placed at point of delivery by the date set by State Law, which in this instance was June 10th, timerolls had to be computed and sent to the Accounting Department promptly. There were no furloughed clerks available to perform this work.

In the absence of a furloughed clerk, Mr. Blue, who had formerly held the position of T&E timekeeper, was used to close up the station and T&E timerolls and prepare the payrolls. He was used on Sunday, June 1, on an overtime basis, from 9:00 A. M. to 5:00 P. M., a total of eight hours, and on Monday, June 2, from 7:20 P. M. to 11:20 P. M., a total of four hours, and in addition the Carrier required Mr. Blue to suspend work from his regular assignment on June 2 from 1:30 P. M. to 4:45 P. M., a total of 3 hours and 15 minutes, and on Tuesday, June 3, he was required to suspend work on his regular assignment from 7:45 A. M. to 1:35 P. M., less a one-hour lunch period, a total of 4 hours and 50 minutes, in order to get the payrolls prepared and forwarded to San Francisco to meet the above mentioned deadline.

Claim was submitted to Superintendent H. J. Mulford by Division Chairman G. E. Sylva under date of June 27, 1952, and declined by Mr. Mulford

June 2 or on June 3, how much more work there would be, or complications that might arise, before the payrolls were completed; consequently it was only good administration so to schedule the work as to insure that it would be completed in time to meet the deadlines. No one responsible for the work and with knowledge of the law and importance of on time delivery of pay checks to employees would consider handling otherwise.

The Organization's allegation that a violation of Rule 19 (e) occurred is totally without support in the record.

The positions of Personal Record Clerk and Train and Enginemen Timekeeper are assigned to the same hours, 7:45 A. M. to 4:45 P. M., Monday through Friday, and are located in the same office. The duties of a Personal Record Clerk are not of a nature that have to be performed on a given date or time. When the Timekeeper quit on short notice, claimant was the only employe possessing knowledge to complete the marking of train and engine-men timeslips and payroll work. For any work performed outside his assigned hours, claimant was compensated at time and one-half rate. The duties of claimant's position permitted his performing the timekeeping work without dereliction of his personal record duties and did not result in any overtime following the completion of the timekeeping work.

What overtime was absorbed? At no time during handling of this claim on the property has the Organization shown that overtime was absorbed. This claim constitutes a request for double payment regardless of circumstances. The question of claimant being required to discontinue work on his regular position and fill a vacancy on another position when otherwise Carrier would have had to pay overtime to fill the vacancy is not involved or ever contended by the Organization. Nor is the question of requiring claimant to suspend work on his assignment and perform work of other positions, which work would otherwise have had to be performed on an overtime basis involved. Certainly claimant worked what overtime was necessary. If other employes had possessed knowledge to have performed the work, then it might have been argued that Carrier could have used them Monday night, but such is not a fact. Again, the Organization's refusal to consider the emergency existing can only constitute an arbitrary demand.

Further, the claim here presented for "eight hours at his regular rate for June 2 and 3, 1952, in addition to compensation already allowed" is unprecedented. If claimant, occupying a higher rated position than the rate paid a T&E Timekeeper, had indicated his desire to fill the position of T&E Timekeeper, he would only receive one day's pay, not two, as here claimed.

Carrier strongly urges that the instant claim be denied in its entirety. The record plainly reveals that claimant was not required to suspend work for the purpose of absorbing overtime. Claimant's performance of timekeeping duties was solely because of the unforeseen emergency condition that arose. He was properly compensated under the agreement for service performed both within and outside of his assigned hours.

All of the above has been presented to the Employees' representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The claimant in this case, W. A. Blue, was regularly assigned as Personal Record Clerk in the General Office at Sacramento, California. His assigned hours were 7:45 A. M., to 4:45 P. M., daily except Saturday, Sunday and holidays.

Mrs. Nelda DelPonte worked in the same office with Blue as T&E Timekeeper, and had the same hours of assignment and schedule as Mr. Blue.

Mrs. DelPonte's duties consisted of posting the time slips from train and engine service employes and, at the end of a payroll period, preparing a payroll from same.

Organization concedes that the work of the T&E Timekeeper had to be prepared promptly, and stated:

“ . . . Because of the necessity of meeting payroll deadlines set up by the Accounting Department for the station and T&E payrolls, in order that paychecks be issued and placed at point of delivery by the date set by State Law, which in this instance was June 10th, time-rolls had to be computed and sent to the Accounting Department promptly.”

On Thursday, May 29, 1952, Mrs. DelPonte, without prior notice, quit her job at the end of her shift. It is recognized there were no furloughed clerks available to perform the work of the T&E Timekeeper position.

Faced with the legal requirement of having the payroll checks here involved issued and at point of delivery by June 10, Carrier had, as an administrative procedure, determined that the payroll information, normally prepared by the T&E Timekeeper, for the second half of May, 1952, must reach its San Francisco Accounting Department by June 4.

The day following Mrs. DelPonte's resignation was May 30, a holiday. Following in sequence were May 31 and June 1, a Saturday and Sunday, respectively—a period of 3 days for which no office work was scheduled.

The claimant, Mr. Blue, formerly held the job as T&E Timekeeper, and Carrier elected to use his services, in what it deemed to be an emergency situation, to compute and complete the payroll information for the second half of May and get it to San Francisco by June 4, date chosen by Carrier as its target.

Accordingly, Mr. Blue was called to do this payroll work on Sunday, working from 9 A. M., to 5 P. M., on an overtime basis. Carrier also used his services in this capacity on Monday evening, June 2, from 7:20 P. M., to 11:20 P. M. He was properly paid at the prescribed overtime rates for this phase of the work. Organization finds no fault with Carrier thus far.

However, Carrier did assign this special payroll work to Mr. Blue during his regular shift (as Personal Record Clerk) on Monday, June 2 from 1:30 to 4:45 P. M., and on Tuesday, June 3 from 7:45 A. M., to 1:35 P. M., in order to complete the payroll work and forward it to San Francisco to meet Carrier's June 4 deadline.

This latter phase, Organization asserts, was an action on Carrier's part requiring Blue to suspend work on his regularly assigned position as Personal Record Clerk for the stated periods on June 2 and 3, and claims Carrier is in violation of Rule 19 (e):

“Employees shall not be required to suspend work during regular hours to absorb overtime.”

Organization avers Carrier should have arranged for Mr. Blue to perform the within-shift work of June 2 and 3, on May 30 or 31, or prior to or following his regular shift on June 3 so that such work would have been performed at overtime rates. Organization further claims had this been done, the payroll work would have been completed by 10:05 P. M., on June 3 and been delivered to the Railway Express Agency at Sacramento by 11 o'clock that night, which was Carrier's deadline.

Point at issue revolves around the payroll work performed by Mr. Blue (a total of 8 hours, 5 minutes for which pay for 2 shifts of 8 hours each is asked,) within his regular shifts as Personal Record Clerk on June 2 and 3, and whether assignment by Carrier of Mr. Blue to do this payroll work within his regular shift was an act on Carrier's part requiring Mr. Blue to “suspend work during regular hours to absorb overtime.”

It is agreed by the parties (a) that Blue was properly compensated for his full shift as Personal Record Clerk on June 2 and June 3; (b) that he was properly compensated for the payroll work he performed at overtime rates on June 1 (a Sunday) and June 2, following the end of his regular shift as Personal Records Clerk; (c) that emergency, caused by the sudden resignation of Mrs DelPonte, was an emergency not of Carrier's own making and (d) there was nothing improper in assigning the payroll work to Claimant Blue.

The point here for decision is: Did Carrier require Blue to do this payroll work within the hours of 7:45 A. M., and 4:45 P. M., on June 2 and 3 so as to avoid having to pay him for this work at overtime rates?

Had not Mrs. DelPonte resigned, Carrier states she would not have worked May 30, (holiday) May 31, (Saturday) or June 1 (Sunday). She would have begun her payroll work Monday morning, June 2 and completed it by the end of her regular shift Tuesday afternoon.

Carrier brought Claimant out to work on Sunday from 9:00 A. M., to 5:00 P. M., to post "to the time rolls all the time slips and overtime slips in the office at that time."

When, on Monday evening at 7:20 P. M., he was returned to the payroll assignment, he completed posting of slips accumulated to that time. He had also done payroll work that afternoon, within his regular 7:45-4:45 shift. And, on the following morning, Carrier assigned Blue to continue the payroll work at the 7:45 A. M., start of his regular shift because Carrier claims it "had no way of knowing how long it would take to prepare the payroll, how many extra time slips would come in, how many errors would turn up, or any other variable that would occur. It was only common sense and good management to have Blue start work on the payroll as the first order of business."

Organization does not dispute this recital of how, when and why the work was done, as here recited, except to argue that the "within shift" payroll duties performed by Blue should have been performed without the boundaries of his regular shift so as to merit overtime rates, because of Rule 19 (e):

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

Organization does, however, make the point that had Claimant "been worked the full 4 hours and 50 minutes on June 3, 1952 on an overtime basis after completing his regular tour of duty at 4:45 P. M., and allowing the maximum of 30 minutes for a second meal period as provided in Rule 16, he would have finished at 10:05 P. M., allowing 55 minutes, ample time we are sure for Claimant to have delivered the payrolls to the Railway Express Office by 11:00 P. M., in time to be received in San Francisco on June 4, 1952."

Looking back on this incident, after the fact, we must agree with Carrier that at 7:45 A. M., on June 3 it had no way of knowing how long it would take to prepare the payroll . . . it was only common sense and good management to have Blue start on the payroll as the first order of business."

Both Organization and Carrier cite many Awards of this Division in support of their respective positions.

For example, Award 7094, (Carter):

"In the absence of evidence on the subject, there is a presumption that overtime is absorbed by suspending an employe from his regular assignment to work another when no vacancy exists. The presumption disappears when evidence is produced and the question

must then be determined the same as any other disputed question of fact.

* * * "The record shows that overtime had never been required and that the work had always been done by the regular employes as they got to it. It will be noted that the work involved is a type that ordinarily does not need to be performed promptly and that delay in performance worked no hardship on the Bureau. * * *

* * * The purpose of the rule prohibiting suspension of work to absorb overtime is to prevent loss to employes who would otherwise have performed overtime. But where it is shown that they would have suffered no loss of overtime work, the rule grants them no relief because they have not been injured. See Awards 4151, 5625, 6673." (Emphasis added)

In the instant case, a vacancy did exist by the sudden resignation of the T&E Timekeeper.

Further, Organization does not deny that no overtime would have been necessary on the part of Mrs. DelPonte June 3 and 4, had she remained at work. But she quit, there was a vacancy and the work did have to be done promptly.

Claimant Blue would not have "otherwise performed overtime." As it was, he received overtime for the work performed Sunday, June 1 and the evening of Monday, June 2, in addition to his regular pay as Personal Record Clerk for June 2 and 3. He was not "injured."

Further, Organization cites Award 5125 (Carter) in support of its claim. Here is a portion of that Award:

"* * * The claim here made is that the employes in the bookkeeping group are required to discontinue their regularly assigned duties during regular working hours and to perform duties assigned to the payroll positions, during the peak of payroll periods. It is claimed that this use of bookkeeping employes is done to avoid the payment of overtime to the **occupants of the payroll positions.**" (Emphasis added)

Yet, in the instant case there was no payroll (T&E Timekeeper) Clerk. She had resigned without advance notice May 29. No furloughed clerks were available.

In Award 7187, Livingston Smith, this Division stated:

"The criteria apparently applied was that no employe could be withheld from his regular assigned duties, and required to perform other duties, if the performance of such newly assigned duties had the result of **depriving another employe**, who might otherwise normally perform this work, of the **opportunity** of doing so on an overtime basis." (Emphasis added)

There are many similar Awards of this Division which could be quoted but the preponderance of the evidence leads us to the inescapable conclusion that Carrier's action was not violative of Rule 19 (e) or any other rule of the Agreement and the claims here presented must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1957.