

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Howard A. Johnson, Referee

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**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 4-C-1, by not permitting Receiving Clerk George Moon to perform extra service at the overtime rate in connection with his regular assignment at Ontario Street Freight Station, Philadelphia, Pa., Philadelphia Terminal Division, on various dates during the period June 26, 1953, to September 4, 1953, inclusive.

(b) Claimant should be allowed payment at the punitive rate for all time spent in the performance of this work by the Foreman at Ontario Street Freight Station during the period shown. (Docket E-909.)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Penna. Railroad Co.—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant, George Moon, was the incumbent of regular Clerical Position Symbol F-2362, at Ontario Street Freight Station, Philadelphia, Pa., Philadelphia Terminal Division, tour of duty 8:00 A. M. to 5:00 P. M., with one hour meal period, Monday through Friday, rest days Saturday and Sunday. He acquired this position through the exercise of seniority. The position was last advertised in Bulletin No. 216, dated May 26, 1946, in the following manner:

disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

### CONCLUSION

The Carrier has established that the Foreman, Ontario Street Freight Station, properly was used to perform the miscellaneous items of work referred to above on the dates in question, and that the Claimant is not entitled to the compensation which he claims.

It is respectfully submitted, therefore, that the claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim is that the Carrier violated Rule 4-C-1 of the Agreement "by not permitting Receiving Clerk George Moon to perform extra service at the overtime rate in connection with his regular assignment" on various Fridays from June 26 to September 4, 1953.

Rule 4-C-1, which Carrier is accused of violating, is as follows:

"Employees will not be required to suspend work **during regular hours** to absorb overtime." (Emphasis added.)

The Employees' Statement of Facts shows that on each Friday during that period, except for August 21, when Claimant was on vacation, he worked his eight hours straight time and in addition from one to two and one-half hours overtime. The objection is that after Claimant had worked these hours the Freight House Foreman on each date worked an additional period of from one-half hour to 3 hours on similar work.

Thus the Employees' own statement shows that Claimant was not "required to suspend work during regular hours," since on every date except when on vacation he worked his regular hours, and more.

The Employees' Rebuttal Brief admits that obvious fact and counters with the following novel contention:

"Herein the Carrier refers to Rule 4-C-1 and states that this rule is not applicable because the Claimant did not suspend work during regular hours. We think the Carrier is merely begging the issue. If an employee may not be required to suspend work during regular hours to absorb overtime, certainly he cannot be required to suspend work during overtime hours to absorb overtime. \* \* \*"

In other words, this Board is asked to remove from the Rule the words "during regular hours," which were placed thereby the parties.

In view of our obvious lack of any authority to rewrite the Agreement, the claim must 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, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 involving herein; and

That 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 28th day of January, 1958.