

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

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-A-1 (i), when work performed five days a week, Monday through Friday, by the Claimant, was improperly assigned to another regularly assigned clerk at Court Street Freight Station, Cincinnati, Ohio, Cincinnati Division, on an overtime basis, on rest days of the Claimant.

(b) The Claimant, D. O. Henderson, should be allowed four hours pay, at the punitive rate, for Saturday, April 1, 1950, and all subsequent Saturdays on which the violation has occurred. (Docket W-803.)

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 Pennsylvania Railroad Company—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, D. O. Henderson, is the regular incumbent of Clerical Position FC-107-F, tour of duty 1:00 P. M. to 4:00 P. M., and 4:30 P. M. to 9:30 P. M., rest days Saturday and Sunday. The advertised primary duties of the position are, "Tearing down, sorting and mailing waybills (Outbound), listing tonnage, extending rates, billing and other miscellaneous work in connection with same." Mr. Henderson has a seniority date on the

6013—"In addition, under Awards of this Division, the Claimant should receive the pro rata pay, the principle announced being that employees who do not work should not receive overtime rates of pay, seems applicable here. See Awards 4916—4244."

5978—"The general rule is that the right to work is not the equivalent of work performed, so far as overtime is concerned. Consequently, time not actually worked cannot be treated as overtime unless the Agreement specifically so provides."

See also Third Division Awards 6241, 6217, 6216, 6212, 6095, 6019, 6016, 5638, 5620, 5579, 5558, 5240, 5195, 5117, 4815, 3587 and 3467.

The Carrier submits, therefore, that even assuming a violation of the applicable Agreement in the instant case, which the Carrier denies, the Claimant would only be entitled to the compensation claimed at the straight time rate of pay.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine 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 to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 shown that the work in question was properly performed by the incumbent of clerical position, symbol FC-105-F, that no provision of the applicable Agreement has been violated, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

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

(Exhibits not Reproduced.)

OPINION OF BOARD: The agreed statement of facts recites in part:

"D. O. Henderson, is the regular incumbent of Clerical Position FC-107-F, tour of duty 1:00 P. M.—4:00 P. M. and 4:30 P. M.—9:30 P. M., with relief days Saturday and Sunday, rate of pay \$264.17. W. B. Huesman, is the regular incumbent of Clerical Position FC-105-F, tour of duty 7:00 A. M. to 12 Noon and 1:00 P. M. to 4:00 P. M. with relief days Sunday and Monday, rate of pay \$279.17.

"On Saturday, April 1, 1950, Clerk Huesman was worked overtime performing duties of his regular assignment and also duties in connection with freight loaded on Saturdays. (Which was Claimant's work)

"It is the claim of the Division Chairman that on this and subsequent Saturdays, Huesman had been worked overtime by reason of assuming duties that would normally be performed by Henderson."

Carrier seeks to avoid payment of the claim on its right to stagger the work since both employees are of the same class and craft in the same seniority district relying on rule 5-E-1 (a) quoted by the Carrier as follows:

"(a) (Effective September 1, 1949) The Company will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of forty hours, consisting of five days of eight hours each, with two consecutive days off in each seven; **the work weeks may be staggered in accordance with the Company's operational requirements:** so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of the Chicago Agreement of March 19, 1949. (Emphasis added)"

The difficulty with this however is that the Carrier only staggered the work of Huesman, not that of the Claimant, and the rule is well established on this Division that this may not be done.

Claimant being "the regular employee" within the meaning of Rule 4-A-1 (i) was entitled to the work for which claim is made.

Our conclusion is that the Carrier violated the agreement and that the claim should be sustained.

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of March, 1958.