

Award No. 9488
Docket No. CL-8767

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

a. The Carrier violated the rules of the Clerks' Agreement by its failure to compensate Crew Clerk W. L. LeBeouf at the punitive rate for service performed in excess of eight hours in a twenty-four hour period on February 2, 1954.

b. Mr. W. L. LeBeouf is entitled to and shall now be compensated for the difference between the pro rata rate received and the rate of time and one-half for eight hours' service as Crew Clerk from 8:00 A. M. to 4:00 P. M., February 2, 1954.

EMPLOYES' STATEMENT OF FACTS: Mr. LeBeouf, assigned to position of Crew Clerk, Stockton Yard, 12 Midnight to 8:00 A. M., with Tuesdays and Wednesdays as rest days, was used to relieve the Crew Clerk with hours 8:00 A. M. to 4:00 P. M., on Tuesday, February 2, 1954, while the occupant of that position was on vacation. Mr. LeBeouf worked his regular assignment beginning at 12 Midnight on February 1st and after completing same, continued working until 4:00 P. M. February 2nd in relieving the 1st trick Crew Clerk, thereby working 16 consecutive hours in a 24-hour period.

Claim for payment at the rate of time and one-half for service performed 8:00 A. M. to 4:00 P. M. was filed by Mr. LeBeouf and declined by the Timekeeper through the following letter:

"Sacramento — February 9th, 1954
C — I

"Mr. W. L. LeBeouf, Jr.
Crew Clerk
Stockton Yard

In sustaining the Carrier's position in this dispute, Referee Morse stated as follows:

"It is the referee's opinion that the Carrier's position on this illustration is absolutely sound and within the meaning and intent of the vacation agreement . . . He is convinced that it was not the intent of the parties, nor is it reasonable to assume that they could have intended, that when a Carrier grants an employe a vacation and his job is such that it must be filled with a relief worker, an additional cost of overtime pay must be incurred for the first shift."

In view of the provision of Article 12(b) that, in filling a vacation vacancy where a regular relief employe is not used, effort is to be made to observe the principle of seniority, Carrier has felt that it should be guided by Clerks' Rule 31(e) which prescribes how effect will be given to seniority in filling short vacancies.

Thus, it can be seen that the above interpretation of the vacation agreement is entirely consistent with the proper application of Clerks' Rule 31(e) and 29 which provide that the move made by the claimant in this instance was a change of assignment in the exercise of seniority rights and, as such, except from overtime pay by the express language of Clerks' Rule 20(a).

In summary, Carrier emphatically asserts that claimant W. L. LeBeouf, Jr., was properly compensated for service performed on February 2, 1954 and that the instant claim for additional payment for that service is without support under the controlling rules of the Agreement. Carrier strongly urges that the instant claim be denied.

All of the above has been presented to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim was presented and progressed on the property under the overtime provisions of Rule 20 of the applicable agreement, specifically subparagraph (a) of the Rule. On such basis, the exception to work in excess of 40 straight time hours in any work week and to work on the sixth and seventh days of the work week provided in subparagraphs (b) and (c) of the Rule is applicable and requires denial of the claim.

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 involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1960.

SPECIAL CONCURRENCE TO AWARD NO. 9488, DOCKET NO. CL-8767

We concur that this claim must be denied, but do so for the reasons stated in our Dissent to Award No. 9487 involving the same parties.

/s/ C. P. Dugan

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen

**ANSWER TO CARRIER MEMBERS' SPECIAL CONCURRENCE TO
AWARD NO. 9488, DOCKET NO. CL-8767**

This Award is based on an entirely different set of circumstances and rules than those involved in Docket CL-8764, Award No. 9487. Consequently, the instant Award has no bearing on the circumstances presented in Award No. 9487.

/s/ J. B. Haines
Labor Member

**REPLY TO LABOR MEMBERS' ANSWER TO SPECIAL
CONCURRENCE TO AWARD NO. 9488, DOCKET NO. CL-8767**

It may be true that, in part, the facts in this Award are a little different from those in Award 9487, but the Labor Member, in argument to the Referee, stated not only that the cases were somewhat similar, but cited the same Awards to the Referee as he did in arguing the case in Award 9487. We concur in denial of the claim in Award 9488 for the reasons stated in the Award as well as the reasons set forth in our Dissent to Award 9487.

/s/ C. P. Dugan

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen

**ANSWER TO CARRIER MEMBERS' REPLY TO LABOR MEMBER'S
ANSWER TO SPECIAL CONCURRENCE TO AWARD NO. 9488,
DOCKET NO. CL-8767**

Carrier Members' statement as to my argument before the Referee in Award 9487 is not factual. What I did say was:

"The situation we have before us here is somewhat similar to that in Docket CL-8764, the only difference being that in Docket CL-8764 the Service on Rest Days Rule was involved. In this dispute we have a Rule which provides that time in excess of eight hours in any twenty-four hour period shall be considered overtime and paid on the actual minute basis at the rate of time and one-half. The only exception thereto being that where the employe is changing assignments in the exercise of seniority rights etc."

(2nd paragraph, page 2, Labor Members' Memorandum to Referee)

The rule in dispute (Rule 20(a)) is peculiar to this property. Consequently, this Award would not establish a precedent involving similar circumstances under other agreements that do not carry an exception to the daily overtime rule.

/s/ J. B. Haines
Labor Member