

Award No. 9503

Docket No. CL-9111

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FRIEGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when it removed regularly assigned Employee M. C. Friedrich from his position for the purpose of filling a temporary vacancy on Position No. 535 to avoid the payment of overtime to the regular occupant of that position.

2. Carrier shall now be required to compensate Employee J. A. Wuerl for eight (8) hours at the time and one-half rate of Car Record Clerk Position No. 535 for July 19 and 20, 1955.

EMPLOYEES' STATEMENT OF FACTS: Employee J. A. Wuerl is regularly assigned to Car Record Clerk Position No. 535 at Muskego Yard, Milwaukee, Wisconsin. Position No. 535 is a seven-day position and Employee Wuerl's assigned work week is Thursday through Monday with rest days of Tuesday and Wednesday. His hours of service are from 8 A. M. to 4:30 P. M.

Employee F. E. McClintic is assigned to Relief Position No. 11 Saturday through Wednesday with rest days of Thursday and Friday. On Saturday he relieves Yard Clerk Position No. 581 at Muskego Yard. On Sunday and Monday he relieves Chief Yard Clerk Position No. 559 at Menominee Belt. On Tuesday and Wednesday he relieves Car Record Clerk Position No. 535 at Muskego Yard.

Employee M. C. Friedrich is regularly assigned to Position No. 526, Supervisor of the Car Record office. Position No. 526 is not a position filled seven days, but is a 5-day assignment with assigned hours from 6 A. M. to 2 P. M. Monday through Friday.

On July 19 and 20, 1955 the regular occupant of Relief Position No. 11, Employee F. E. McClintic, was off account illness. On these days Employee M. C. Friedrich was removed from his regular assignment on Position 526 for the purpose of performing the relief work on Car Record Clerk Position No. 535.

been filled seven days per week. The purpose of Rule 27 is not a "guarantee" as to days of work per week, but it is for the purpose of indicating what the rest days shall be. Rule 27 was complied with in every respect in the instant case.

Memorandum No. 9, paragraph 4, to which the employees refer, provides who shall be called for overtime. It is the Carrier's position that Memorandum No. 9 has no application in the instant case as there was no overtime required on Position No. 535 on July 19 and July 20, 1955 nor was there any overtime worked. Employee Friedrich performed service only during his regularly assigned hours and the work which he performed during those assigned hours was the same as that which he normally perform except he consumed a little more time in connection with car records than ordinarily.

Furthermore, no overtime would have been necessary in connection with the car record work had employee Friedrich devoted no more time to such work than normally, for the reason that such work would have been held over and performed on following days during regularly assigned hours, just the same as some of such work is held over from day to day.

We should like to direct attention to the following quoted from the Opinion in Award 7227:

"This Board has held in numerous Awards that a Carrier is not bound to pay the punitive rate for work done if the same can be accomplished at the straight time rate, within the framework of the collective agreement. Rules relied upon by the Petitioner do not preclude such an accomplishment here."

In conclusion the Carrier should like to point out once again that Employee Friedrich was not removed from his regular assignment on July 19 and July 20, 1955 for the purpose of performing the duties of Car Record Clerk Position No. 535. There was no overtime required on Position No. 535 on July 19 and July 20, 1955 nor was there any overtime worked.

There is no schedule rule support for the claim which the employees have presented and the Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced)

OPINION OF BOARD: Under the facts and rules involved herein there is no merit to 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 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 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 21st day of July 1960.