

Award No. 9567
Docket No. CL-8866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerk's Agreement:

1. (a) When on November 3, 1955 and subsequent dates it required regularly assigned Rate Clerk, W. F. Ramey and Assistant Rate Clerk, A. N. Stafford at Elkhorn Yard, Ky. to report for work three hours prior to and suspend work three hours in advance of their bulletined hours of assignment thus violating Rules 8 and 43, among others, of the Clerk's Agreement.

(b) When on December 6, 1955 and subsequent dates it required regularly assigned Stenographer-Clerk at Johnson City, Tennessee, Miss Majeau Montgomery to report for work one half hour prior to and suspend work one half hour in advance of her bulletined hours of assignment, this violating Rules 8 and 43 among others, of the Clerk's Agreement.

2. (a) That Rate Clerk W. F. Ramey, his successor L. Ledford, and Assistant Rate Clerk A. N. Stafford shall be paid for three hours' work at the time and one-half rate of their respective positions for each day they were required to commence work three hours earlier than the regularly bulletined hours of the assignment during the period November 3, 1955 to April 2, 1956, the date the positions were properly bulletined showing the newly-assigned hours.

(b) That Miss Majeau Montgomery shall be paid for one-half hour's work at the time and one-half rate of her position for each day she was required to commence work one-half hour earlier than the regular bulletined hours of her assignment during the period December 6, 1955 to April 2, 1956, the date the position was properly bulletined showing the newly-assigned hours.

EMPLOYEES STATEMENT OF FACTS: There is in evidence an Agreement between the Employees represented by the Petitioner and the Carrier

no rule to support the claim presented to the Board. We have further shown that the past practice, which has extended for a period of more than twenty years, reflects a mutual understanding of the parties to the agreement.

Furthermore, despite the desire of the Carrier, the Employees have refused to negotiate a rule to cover that of which they complain.

We submit, therefore, that the claim of the Employees, and each and every part thereof, is wholly without merit and that it should in all respects be denied. Carrier respectfully requests the Board to so hold.

All matters contained herein have heretofore been presented to the duly authorized representatives of the Organization and have been made a part of negotiation on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims arose because the Carrier changed the assigned hours of Claimants' positions without the issuance of bulletins. The assigned hours of the positions were: Claimant Ramey, Rate Clerk, Elkhorn Yard, Kentucky, 2:00 P. M. to 11:00 P. M.; Claimant Stafford, Assistant Rate Clerk and Yard Check Clerk, same location, 11:00 P. M. to 9:00 A. M.; Claimant Montgomery, Stenographer-Clerk, Johnson City, Tennessee, 8:00 A. M. to 5:00 P. M.

On notices to the individual Claimants, these hours of their positions were changed as follows: Rate Clerk to 11:00 A. M. to 8:00 P. M., and Assistant Rate Clerk and Yard Check Clerk to 8:00 P. M. to 4:00 A. M., both changes effective November 2, 1955; Stenographer-Typist to 7:30 A. M. to 4:30 P. M., effective December 6, 1955.

The Employees contend that the Carrier's actions in requiring the Claimants to report for work in advance of the assigned starting times of their respective positions violated Rule 8 and Absorbing Overtime Rule 43 of the Agreement.

Rule 8 requires that "New positions or permanent vacancies of more than 30 days duration for employes in Group 1 and 2 will be promptly bulletined . . .". It is not claimed here that the changes in the hours of the positions involved created new positions or vacancies.

The Employees base their claims on the provision of this Rule that "Bulletins will show the location, title, hours of service, rate of pay, new position or vacancy". This provision does no more than specify the information which will be shown in the bulletins required by the Rule. It does not purport to state, directly or indirectly, any restraint on the Carrier from effectuating a change of position hours. We are not referred to any rule of the Agreement which has such restraining effect; and our functions do not authorize us to add it. In the absence of such rule, no violation of the agreement occurred when the Carrier changed the hours of the Claimants' positions. See Awards 7296, 7362, 7653, 7786.

The claims are not valid under Absorbing Overtime Rule 43. The Claimants were not required, as a matter of fact, to suspend the work on their positions in order to work on other positions. Compare Awards 3301, 5105, 5578, 8080, 8205. The record does not justify finding that the hours were changed for the purpose of absorbing overtime work.

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 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

That the Agreement was not violated.

AWARD

Claims denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois this 21st day of September, 1960.