

Award No. 9582

Docket No. CL-8987

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that The Ogden Union Railway and Depot Company violated the existing Agreement

(a) When on June 19th, 1955 it required clerk Robert R. Lloyd to suspend work on his assigned position as Yard Clerk and required him to work Office Boy position, and

(b) That Robert R. Lloyd be paid the rate of Office Boy position, \$11.656 for work performed on that position, in addition to Yard Clerk rate \$14.344 per day which he has already been paid.

EMPLOYEES' STATEMENT OF FACTS: Mr. Robert R. Lloyd was regularly assigned, in compliance with all applicable rules of the existing Agreement, to rest-day Relief Position No. 37. On June 19, 1955 this regular assignment included and required work on Yard Clerk position No. 7-61 from 4:00 P. M. until 12 o'clock midnight, which shift was one of five embraced within Relief Position No. 37. The daily Yard Clerk rate of pay was \$13.344.

At 4:00 P. M., June 19, 1955 Mr. Robert R. Lloyd reported for work at the yard office preparatory to performing his regular assigned duties on yard clerk position No. 7-61, at which time he was instructed and required by his supervisor to vacate his position of Yard Clerk and work the shift on Office Boy position No. 15-6, daily rate \$11.65.

Before taking up his duties on the Office Boy position Mr. Lloyd protested that he had not made written request to be "rearranged" in line with rules, regulations, interpretations and written instructions. Notwithstanding, Mr. Lloyd complied with the orders issued by his superior and worked the Office Boy position.

The assigned duties on the position of Office Boy consumed the full eight hours of Mr. Lloyd's time. No other class of work was performed by him during the shift named in this claim. He did not perform any Yard Clerk work nominally assigned to his own yard clerk position or to any other yard clerk position.

to write a rule into the contract. Only by eliminating Rules 3 and 28 and writing substitute rules could this claim be sustained, and that is a function reserved by the Railway Labor Act to the parties who wrote the contract.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Here it is clear that no extra employe was available and that Claimant's diversion to the office boy's position avoided the necessity of calling a regularly assigned employe to fill that position on an overtime basis.

Many precedents are cited in support of this claim, including Awards 3417, 3418, 4352, 4499, 4500, 4641, 4646, 4692, 5105, 5578, 5727, 5834, 5979, 6153, 6308 and 6732. The awards sustaining claims of this nature are so numerous and long established that they should not be rejected under the record in this case.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1960.