

Award No. 9616
Docket No. CL-8448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) That Carrier violated the parties' Agreement of November 16, 1945, and supplements thereto, on Thursday, October 4, 1951, and subsequent days of the week designated as rest days for the position of Roundhouse Clerk at Big Spring, Texas, by utilizing the services of a non bona fide employe in this rest day relief service.

(2) That R. L. Baber and his successor if there be any, the regular assignee to position of Roundhouse Clerk at Big Spring, be compensated for wage loss sustained, namely a day's pay at the overtime rate attached to this position, on October 4, 1951, and all subsequent days that the regular assignee was relieved by a non bona fide employe on his designated rest days of each week.

NOTE: Restitution to be determined by joint check of Carrier's payrolls and other records necessary to determine dates of the Rule violation and monies due claimant(s).

EMPLOYES' STATEMENT OF FACTS: Effective August 6, 1951, and forward until present time the following clerical positions are maintained by Carrier in the Mechanical Department, Big Spring, Texas, which are involved in this dispute.

1. Roundhouse Clerk W-130, assigned hours 8:00 A. M. to 5:00 P. M., Tuesday through Saturday, Sunday and Monday assigned rest days. Position assigned to work 7 days per week.

2. Roundhouse Clerk W-178, assigned hours 8:00 P. M. to 5:00 A. M., Thursday through Monday, Tuesday and Wednesday assigned rest days. Position assigned to work 7 days per week.

The Carrier is at a loss to know how the Brotherhood could legitimately raise any issue in this case which has not already been adjudicated against the Brotherhood under the same agreement on the same property, in Docket CL-7401, by Award 7191, which included these findings:

"It would seem therefore that the outsiders involved indirectly in this claim acquired an employe status under Rule 3 (a). They never attained seniority under Rule 3 (b). They attained a right to perform extra and/or relief work where employed in the order of their employment date when regular employes with established seniority were not available to perform it under Rule 3 (c). This latter provision clearly means that if regular employes with established seniority were not able to perform it at straight time, and there were no extra or furloughed employes with established seniority available, these outsiders with employe status rights were entitled to perform it before the Carrier is required to use such employes with established seniority at the overtime rate. This conclusion is based on the rules as mutually interpreted and applied on this property, and constitutes a controlling precedent under similar rules when accompanied by similar mutual interpretations, conduct and practice on the property which support the estoppel theory underlying the confronting case."

Therefore, the Carrier respectfully requests that the Board dismiss this case, or deny the claim.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioners claim that Claimant Baber should have been called to perform extra work on an overtime basis in preference to using extra or unassigned employes at the pro rata rate. The extra employes used, i.e., Mrs. Everett and Mrs. Jernigan, had an established "employe status" under Rule 3 (a) prior to date of claim.

It appears that it was proper to use Mrs. Everett and Mrs. Jernigan under such circumstances. This is the conclusion reached by the Board in Award 7191 covering a dispute between the same parties and involving an identical issue. That Award is controlling here. Accordingly, claim will be denied.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1960.