

Award No. 9766
Docket No. CL-9503

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

**THE 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 at Cedar Rapids, Iowa when on February 27, 1956, and again on March 5, 1956, it used "outsiders" holding no seniority under the Clerks' Agreement to perform work within the agreement.

2. Carrier shall compensate Employee K. H. Freeman for eight (8) hours at the penalty rate of his position (\$2.99925 per hour) for each of the above named dates, February 27 and March 5, 1956.

EMPLOYEES' STATEMENT OF FACTS: When grain spills from cars at Cedar Rapids, it is the responsibility of the OS&D clerk to arrange for the picking up of such grain. The normal procedure is to secure stowers from the freight house to salvage this grain.

On Monday, February 27, 1956, and again on Monday, March 5, 1956, grain had spilled from cars in the yard at Cedar Rapids; but the Carrier, in lieu of using employes from the freight house, used people from the Unemployment Bureau.

On February 27, 1956 Carrier used J. W. Rammelsberg and Paul E. Mulkenin, with Mr. Rammelsberg working 7 hours and 15 minutes and Mr. Mulkenin working 6 hours and 15 minutes.

On March 5, 1956 the Carrier used Raymond E. Leneweaver for 3 hours and 15 minutes. Mr. Leneweaver also worked 5 hours on March 6, 1956.

Employee K. H. Freeman with a clerical seniority date of January 15, 1942 is regularly assigned to Position #36 from 8 A. M. to 4 P. M. with assigned rest days of Sunday and Monday.

Timeslips were prepared by Employee K. H. Freeman and presented to Superintendent P. J. Weiland, who under date of April 25, 1956 declined payment. Mr. Weiland's declination was rejected under date of May 11, 1956.

circumstances the Carrier properly exercised its inherent right, as has been necessary on hundreds of occasions in the past, to employ someone for the temporary new positions.

4. There can be no basis whatever, under the Schedule rules, for this claim in behalf of claimant Freeman who was regularly assigned to position of Chief Yard Clerk in the Cedar Rapids yard for temporary new positions of stower in the Cedar Rapids freight house for which he made no request.

We, therefore, respectfully submit that the claim is entirely without merit and request that it be denied in its entirety.

All data contained herein has been presented to the Employees.

OPINION OF BOARD: At Cedar Rapids, Iowa the Carrier maintained, at its freight house, seven employees, including two stowers.

On Thursday, February 23, 1956, eight inbound merchandise cars were on spot, of which seven were worked and one held over. On Friday, February 24, 1956, ten inbound merchandise cars were on spot, of which eight cars were worked and two held over. On Monday, February 27, 1956, seventeen inbound merchandise cars were on spot at the freight house. Seven cars being worked on February 23 and eight on the 24th, would indicate that seven or eight at the most was the capacity of the regular crew to work per day. In view of this increase of business the Carrier on Monday, February 27, 1956 hired two new employees as stowers, P. Mulkenin and J. Rammelsberg. Carrier had also employed Cole S. Sherwood on January 3 who worked twenty-two days between January 3 and February 17 when he left the Carrier's service.

Employee's claim that K. H. Freeman, who was the regularly assigned Chief Yard Clerk at the Yard Office of Cedar Rapids, should have been called to do stower work on Monday, February 27, 1956 and Monday, March 5, 1956. That Sunday and Monday were his assigned rest days and he was willing and available to perform the work.

When it is necessary for the Carrier to augment the regular force as a result of increase in work it has a right to augment its regular force through the hiring of new employees for new positions or vacancies including those of thirty days or less duration.

Carrier elected to establish an additional new position to augment its regular forces. That it had a right to do and under the circumstances one cannot say reasonably that such action was taken to circumvent overtime preference. So therefore these extra workers were bona fide employees and the claim should 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1960.