

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 WESTERN WEIGHING AND INSPECTING BUREAU**

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

1. The Bureau violated and has continued to violate the Schedule Agreement effective September 1, 1949, and Memorandum of Agreement dated December 29, 1952, when it failed and refused to allow the senior employe W. C. Blake to perform overtime work beyond the eight-hour period.

b. That the Bureau now be required to compensate Claimant W. C. Blake, Serviceman, Kansas City, Missouri, at time and one-half for the number of hours and dates listed in Employees' Exhibit 2 when workers without seniority were allowed to perform overtime beyond the scheduled eight-hour day.

EMPLOYEES' STATEMENT OF FACTS: The parties to this dispute negotiated and executed on the 29th day of December, 1952, a Memorandum of Agreement submitted as Employees' Exhibit 1. The portion of the Agreement in dispute is found in Section (2) reading: "Persons employed for such positions shall not establish seniority."

The Claimant W. C. Blake with seniority date of November 1, 1950, complained that the Bureau only allowed him to work overtime at the K&M Elevator, Kansas City, Missouri, one week then would not let him work any more and started using a Mr. Melvin Whittle, therefore appropriate claim was filed by the District Chairman as shown by Employees' Exhibit 2.

In declining the claim, it should not be overlooked that General Foreman Scott, per Employees' Exhibit 3, used as his authority Rule 34 and referred to M. W. Whittle as a regular employe and did not dispute the fact that Mr. Whittle was not assigned by bulletin.

The claim was then appealed by the District Chairman to the Bureau's District Manager Schumacher as shown by Employees' Exhibit 4. The District Manager again declined the claim by agreeing with the decision rendered by General Foreman Scott and taking no exceptions thereto as shown by Employees' Exhibit 5.

is brought to our Leadman's attention during the afternoon on the day when overtime is necessary and he, in turn, notifies our Servicemen that overtime will be required on that day. This practice is one that has been in effect in this Bureau for many years and at no time have we ever reached out and attempted to utilize the services of one of our other employes who would be located at another elevator; this for the reason that our grain door employes are required to perform their work on the tracks adjacent to the elevators where there are no telephone facilities and any effort to reach employes located elsewhere could only be accomplished by having our General Foreman or Foreman drive to the elevator, contact the senior employe located at that point, and notify him that overtime work would be required for that day at some other elevator and in this respect let it be said without fear of contradiction that our General Foreman and Foreman are not always available at a particular elevator at a given time when it is known that overtime work will be required on a given day, therefore, it must be clear that those of our employes located at other elevators where no overtime is necessary would be unavailable for work at an elevator where overtime is required.

Moreover it is of the utmost importance to consider the application of our Rules Agreement in deciding disputes such as this and by reviewing Rule 34, paragraph (c) which reads:

“(c) In working overtime before and after assigned hours, employes regularly assigned to positions on which overtime is required, will be worked; the same principle shall apply to working extra time on holidays”,

you will find that we complied literally with the provisions of that rule, therefore, for the Employes to maintain that we must utilize the services of a senior employe in providing this overtime is not substantiated by the provisions of our Agreement.

There can be no question whatsoever that Claimant Blake was regularly assigned to the Norris Elevator. Neither can there be any question but what Mr. Whittle was regularly assigned to K & M Elevator, and such being the case we were obligated to work Mr. Whittle at the K & M Elevator, along with our other employes at that elevator when overtime was required for to do otherwise would have been contrary to the provisions of our Agreement and would have subjected us to an indefensible claim. Therefore, we are confident that after you have reviewed the facts as presented herein you will find this claim is without merit and must be declined.

All data presented herein has been submitted to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: At its terminal in Kansas City the Western Weighing and Inspection Bureau employed approximately eighty-seven Servicemen at thirty-two elevators.

Claimant Blake was regularly assigned to Serviceman Position and had established seniority as of November 1, 1950; at harvest season the Bureau employed a number of extra Servicemen. Among these was one Melvin Whittle who did overtime work on the dates outlined in Employes' Exhibit 2.

Employes claim that Blake should have been called to do the overtime work that the Bureau allowed Melvin Whittle to do on the dates referred to in Employes' Exhibit 2.

There is no dispute between the parties that Claimant Blake was regularly assigned to Serviceman Position and had an established seniority date, nor is it disputed that the employee used to perform the overtime work had no seniority.

Mr. Melvin Whittle worked overtime at the K & M elevator while filling the position of Serviceman, and Claimant says he should have been called to do this overtime work.

Blake, the Claimant, worked at the Norris Elevator on all of the dates in question with the exception of July 19 and 20 when he worked nine hours each day. This the Employees dispute and a request by the General Chairman for a joint check was ignored by the Bureau. Employees do not contend that the Claimant worked at the K & M Elevator. Had Claimant worked at the K & M Elevator there would be no question about his claim being valid. There is no contention by the employees that Claimant and Whittle worked at the same elevator.

In order to have Blake work at the K & M Elevator it would be necessary for the Bureau to notify him at the Norris Elevator which is a mile away. It is undisputed that at the track where the work of Servicemen is performed there is no telephone or other means of communication, and it would be necessary for the General Foreman or Foreman to drive to the other elevator to inform the employee with seniority. While these particular elevators are only a mile apart, some of them are as much as fourteen miles apart. This would be a disruption of the orderly progress of the business and certainly there was no intention of the parties to the agreement that the Bureau should have to go to such lengths to call an employee who had seniority.

Therefore the claim must 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 Employee involved in this dispute are respectively Carrier and Employee 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 Bureau 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.