

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement between the parties when at Atlanta, Georgia, it compensated Mr. D. R. Hughes, Sr., for two hours instead of eight hours at proper rate of time and one-half.

(b) Claimant, Mr. D. R. Hughes, Sr., shall now be paid the difference between eight hours at time and one-half the rate of Chief Revision Clerk and two hours at the same rate which he has been paid.

EMPLOYEES' STATEMENT OF FACTS: 1. Mr. D. R. Hughes, Sr., was, on the date the instant claim arose, regularly assigned to the position of Rate Clerk, Atlanta, Georgia, Freight Agency. In the same office, Mr. H. E. Lee was regularly assigned to the position of Chief Revision Clerk. Both positions had a work week beginning on Monday, Saturday and Sunday being rest days. The hours of assignment of each position was 8:00 A. M. to 5:00 P. M.

2. Claimant, Mr. D. R. Hughes, Sr., requested and was assigned to the position of Chief Revision Clerk, vice Mr. H. E. Lee, during Mr. Lee's vacation of two weeks beginning on Monday, July 9, 1956. Mr. Hughes' position of Rate Clerk was filled on certain days and allegedly "blanked" on certain other days. On Tuesday, July 10, 1956, the position of "Rate Clerk" was not filled for eight hours. Claimant Hughes, after working eight hours on Mr. Lee's position of Revision Clerk, was required to work two hours on the position of "Rate Clerk". For this service, Claimant Hughes was paid two hours at time and one-half at the rate of Chief Revision Clerk. The Employees' claim is that Claimant Hughes should have been paid at proper rate of time and one-half for eight hours instead of two hours at the rate of Chief Revision Clerk.

3. Claim was duly filed under date of September 1, 1956, and was timely appealed up to Carrier's highest officer designated to receive and consider

Moreover, claimant and other rate clerks employed in the Atlanta agency were on duty and worked their regular hours while Mr. Lee was on vacation. In these circumstances, if any overtime work was necessary to be performed before or after assigned hours during Mr. Lee's absence, Claimant Hughes had preference to such work in accordance with the first paragraph of Rule 28, reading—"When necessary to work overtime before or after assigned hours, the employe occupying the position on which overtime work is necessary will be given preference."

Carrier has shown that Mr. Hughes was used and compensated in accordance with applicable provisions of agreement rules for all service required of and performed by him on July 10 and other dates during the period he was temporarily filling the chief revision clerk position in the absence of the regular occupant. The claim is not supported by any rule or provision of the effective agreement, and Carrier respectfully requests that it be denied.

All evidence here submitted is known to employe representatives.

(Exhibits not reproduced).

OPINION OF BOARD: This is a dispute arising between the clerks and the Southern Railway Company relative to the assignment of the Chief Revision Clerk to handle the work of the regular incumbent who was on scheduled vacation.

It is the contention of the Organization that D. H. Hughes, was working his position of Chief Revision Clerk during the assigned hours of his position from 8:00 A. M. to 5:00 P. M. He was then assigned to work the position of Rate Clerk from 5:00 P. M. to 7:00 P. M. for which he was paid two hours at time and one-half rate of the Chief Revision Clerk position.

This claim was filed on behalf of Mr. Hughes for the difference between payment of two hours at time and one-half rate of position of Chief Revision Clerk and eight hours at the time and one-half rate of that position or the difference of six hours at the rate of time and one-half.

The Carrier contends that this question is not framed in and by the claim referred to the Division and that it was not an issue in the handling of the claim and cites Award 7077 to sustain its position.

The Organization admits that no one worked the Rate Clerk position during its assigned hours on the date in question ("see record, Page 5".) The only guarantee in the Agreement is one which applies to Employees and not to positions, according to Rule 46(f) (1).

We must of necessity compare the plain provisions of Rule 27 (a), which is the standard rule in most of the Clerks' Agreements, providing that continuous time actually worked in excess of eight hours on any day "shall be paid for as overtime on actual minute basis at time and one-half rate."

In this case both Lee and Hughes worked side by side with the Chief Clerk (Rate) and other Rate Clerks in the Atlanta Freight Station and had the same assigned hours from 8:00 to 5:00 Monday through Friday. Some of the other Rate Clerks had different starting times, according to the record.

The Organization has relied on Award 7034 but we do not find that the factual situation in that case is identical in any manner to the instant case. The distinction between Award 7034 and the instant case is readily apparent

when we consider the following paragraph, taken from EMPLOYES' STATEMENT OF FACTS in 7034:

"Mr. R. L. Nisely, the regular occupant of Clerk Position No. 340 at Morris, Kansas, was absent from duty on a number of different dates between August 12, 1950 and February 18, 1951, account training with an Air Force Reserve Unit, of which he was a member, preparatory to call to full time active military duty. On some of the days that Mr. Nisely was absent from duty during this period for training purposes, Carrier called either Clerk W. W. Wells or Clerk V. T. Highfill to fill the temporary vacancy thus created on Mr. Nisely's position and assigned and permitted them to occupy and fill said vacancy on Position No. 340 for the full eight hour assignment of that position. However, on the following dates the Claimants were not permitted to work the full eight hour assignment, but were required to work and were paid as indicated: * * *". (Emphasis ours).

Such is not the case before us. In this case, the Claimant was not called to fill some other position; he simply worked two hours overtime, subject to the provisions of Rule 27 (a).

It is the opinion of the Board that the Claimant was properly paid for his services and that there is nothing in the Agreement which requires that he be paid on any different basis than was used. The claim is, therefore, 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February, 1962.