

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

1. The Carrier violated the Clerks' Rules Agreement when it failed to make reasonable efforts to notify or call the senior employee for overtime work to which he was entitled and for which he was available.

2. The Carrier shall now be required to compensate employee T. I. Smith for eight hours at the overtime rate of Yard Checker Position No. 56 for December 27, 1956.

EMPLOYEES' STATEMENT OF FACTS: Employee T. I. Smith, who has a clerical and non-clerical seniority date of January 26, 1951, is the regularly assigned occupant of Relief Yard Clerk Position No. 18 at Savanna, Illinois. His assigned days are Thursday through Monday with Tuesday and Wednesday as rest days.

On Thursday, December 27, 1956, the regular occupant of Yard Checker Position No. 56, assigned to work from 11:45 P. M. to 7:45 A. M., was absent account of illness and it was necessary to fill the position on an overtime basis.

Employee T. I. Smith was the senior employee entitled to be called for that overtime work.

Employee T. I. Smith, who lives two blocks from the yard office, was at home but his telephone did not ring and no one came to his home to call him. Junior Employee A. Klein, who lives in the country, was called and filled the position.

Position 56 December 27, 1956 and that as there was no response to the telephone calls to his home, he was not available for this overtime, and has no proper claim in connection therewith.

The Carrier respectfully asks that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: A. H. Klein, an Employee junior to the Claimant, was called to perform overtime work on Position 56. The question is, did the Carrier make a reasonable effort to call T. I. Smith, the Claimant, for that work.

The assigned hours of Position No. 56 were 11:45 P. M.-7:45 A. M. Sometime between 11:15 P. M. and 11:45 P. M. (the record is not clear) on the day involved, the Carrier was notified that the Employee assigned to that position was ill and would not work.

Carrier contends that between the time notified and the acceptance by A. H. Klein, it called by telephone ten (10) Employees (in accordance with the effective memorandum of Agreement). The first nine (9) Employees either declined the call, were not home, or did not answer. Carrier states that the tenth (10th) man, Claimant Smith, was called twice between 11:45 P. M. and 12:15 A. M. They further state that his telephone was heard to ring but there was no answer. The eleventh (11th) man called, A. H. Klein, accepted at 12:15 A. M.

Claimant Smith contends that he was at home and was available for call but that his telephone did not ring. He contends that in accordance with practice a caller should have been sent to his home, about two (2) blocks distant from the Yard Office.

There is no Rule which specifies that manner in which an Employee shall be called. Evidence of record of an alleged practice is not sufficient to support the Organizations' contention under the factual situation herein.

It is clear that the Carrier recognized the fact that Claimant was entitled to be called and did make some effort to reach him.

We are of one opinion that the Carrier made all the effort required of it under the rule to contact the Claimant in view of the time element and evidence of 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 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 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 21st day of February 1962.