

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

TEXARKANA UNION STATION TRUST

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

(1) That Carrier violated the Clerks' current Agreement at the Texarkana Union Station Sunday, August 25, 1957, when it called and used junior employes instead of senior employes for performing extra work at the punitive rate of pay.

(2) That Messrs. G. W. Odom, G. R. Hughey, G. L. Lawrence, J. C. Powell, E. Clark and G. T. Tallman, each be paid for eight hours time at the overtime rate for Mail and Baggage Handlers for Sunday, August 25, 1957. This to be in addition to that already paid them for same date.

EMPLOYES' STATEMENT OF FACTS: The six Claimants' seniority dates, assignments and rest days are as follows:

| Name | Seniority Date | Assignment | Rest Days |
|----------------|-----------------------|-------------------------|------------------|
| G. W. Odom | 10-30-36 | 6:30 A. M. - 3:00 P. M. | Thurs and Fri |
| G. R. Hughey | 9-18-40 | 7:30 A. M. - 4:00 P. M. | " " " |
| J. C. Powell | 2-26-41 | 6:30 A. M. - 3:00 P. M. | Tues and Wed |
| G. L. Lawrence | 3-28-41 | 7:30 A. M. - 4:00 P. M. | Wed and Thurs |
| G. T. Tallman | 11-27-41 | 6:30 A. M. - 3:00 P. M. | Tues and Wed |
| E. Clark | 7-29-42 | 7:30 A. M. - 4:00 P. M. | Wed and Thurs |

They are all regularly assigned and worked their assignments August 25, 1957.

Due to an increase in business on Sunday, August 25, 1957, it became necessary to use additional help, starting at 4:00 P. M., and the following employes were called and used at the overtime rate:

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

OPINION OF BOARD: All of the Claimants in the instant matter were Mail and Baggage Handlers under the Agreement effective September 1, 1949 at Texarkana Union Station. On Sunday, August 25, 1957, there was an increase in business and it became necessary to use additional help, commencing on 4:00 P. M. of that day. None of the Claimants were called upon to perform this additional work but certain qualified employes junior to the Claimants were called and used at the overtime rate provided for in the Agreement. All of these said junior employes had completed 40 hours of work that week prior to being used. All of the Claimants had worked on August 25, 1947, three of them completing their assignments at 3:00 P. M. and three at 4:00 P. M., so each of them had completed his daily assignment by 4:00 P. M. on August 25, 1957. It is agreed that all of these employes heretofore mentioned were qualified to do the work.

It is the position of the Petitioner that the Agreement, including Rules 4 and 6, was violated when Carrier called and used junior employes to perform this work, without affording the Claimants, senior employes, the opportunity of performing extra work, when the junior employes had no right to claim the work.

The pertinent part of Rule 4 reads, as follows: "Employes covered by these rules shall be in line for promotion . . . fitness and ability being sufficient, seniority shall prevail."

The pertinent part of Rule 6 provides, as follows: "Seniority rights of employes . . . to perform work covered by this Agreement, will be governed by these rules."

Rule 29(c) is also pertinent: "To avoid discrimination as between employes to be used in authorized overtime work, the incumbents of positions which require overtime hours will be used if possible."

Carrier maintains that none of the Claimants had completed his "work week" on the date in question; that all of the employes used had already worked five days or forty hours of their "work week" — that they were the senior employes on their "day off"; Carrier asserts that this was in line with the recognized practice under the rules of the Texarkana Station and that there is nothing in the Agreement prohibiting such a practice.

Award 5346 (Robertson) sets forth the general principle involved in this controversy in the following language: "It is well settled by awards of this Board that even though there are no specific rules in the Agreement covering the situation, seniority is the essence of the Collective Agreement and that it applies in determining preference to overtime work of a given class (see Awards 4200, 4531 and others). It is also a well-established principle that "overtime work arising out of a particular position belongs to the occupant of that position."

See also Awards 2341 and 3193 (Carter).

It has been urged, however, by the Carrier that it had been the practice at the Texarkana Station that employes situated as the Claimants were have not been recognized as available to be called and used, and that this is consistent with the Agreement. This assertion having been made, the Carrier contends it has not been denied by the Petitioner. To the contrary, when such assertion as to practice was made by the Carrier, Petitioner responded that it had been unable to verify that such a claimed practice existed which is in effect a denial of such practice. There being no other proof of such a practice, we cannot consider it in our deliberations.

This overtime work on August 25, 1956, being a continuation of the work Claimants were doing on that day and their assignment for that day having been completed before the "overtime" work assignment commenced, in recognition of their seniority, under the circumstances of this case, these Claimants should have been assigned to this "overtime" work.

They are entitled to the pro rata rate of the positions for the number of hours lost because of Carrier's failure to properly apply the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has been violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.