

Award No. 11290
Docket No. CL-10563

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

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

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

1. Carrier violated the rules of the Clerks' Rules Agreement when it used persons outside the scope and application of that Agreement to ice cars at St. Paul, Minnesota.

2. Carrier shall compensate Employee J. D. Wood, regular occupant of Ice House Laborer position at St. Paul, Minnesota, for eight (8) hours at the penalty rate of pay applicable to his position (\$2.706 per hour) for each of the following dates: August 12, 17, 31, September 7 and 8, 1957.

3. Carrier shall compensate Employee Edward Casey, regular occupant of Ice House Laborer position at St. Paul, Minnesota, for eight (8) hours at the penalty rate of pay applicable to his position (\$2.706 per hour) for each of the following dates: August 9, 12, 16, 20, 23, 27 and September 9, 1957; and for ten (10) hours at the penalty rate on September 3, 1957.

4. Carrier shall compensate Employee B. J. Homsher, regular occupant Ice House Laborer position at St. Paul, Minnesota, for eight (8) hours at the penalty rate of pay applicable to his position (\$2.706 per hour) for each of the following dates: August 19, 20, 24, 26 and 27, 1957; for ten (10) hours at the penalty rate for September 3, 1957.

| Title of Position | Hours of Assignment | Days of Assignment | Rest Days | Occupant |
|-------------------|---|--------------------|---------------|---------------|
| IH Laborer | 7:00 am to 3:00 pm | Mon. thru Fri. | Sat. & Sun. | J. D. Wood |
| IH Laborer | 7:00 am to 3:00 pm | Wed. thru Sun. | Mon. & Tues. | R. B. West |
| IH Laborer | 3:00 pm to 11:00 pm | Fri. thru Tues. | Wed. & Thurs. | W. Hogenson |
| IH Laborer | 11:59 pm to 7:59 am | Thurs. thru Mon. | Tues. & Wed. | B. A. Homsher |
| IH Laborer | 7:00 am to 3:00 pm | Tues. thru Sat. | Sun. & Mon. | M. McDowell |
| Rel. IH Lab. | Occupied by Employee E. Casey relieves employees J. D. Wood from 7:00 am to 3:00 pm on Sat. and Sun., R. B. West from 7:00 am to 3:00 pm on Mon. and B. A. Homsher from 11:59 pm to 7:59 am on Tues. and Wed. and has Thurs. and Fri. as rest days. | | | |
| Rel. IH Lab. | Occupied by J. Van Cleve relieves employees M. McDowell from 7:00 am to 3:00 pm on Sun. and Mon., R. B. West from 7:00 am to 3:00 pm on Tues. and W. Hogenson from 3:00 pm to 11:00 pm on Wed. and Thurs. and has Fri. and Sat. as rest days. | | | |

During the months of August and September 1957, specifically on August 9, 12, 16, 17, 19, 20, 23, 24, 26, 27 and 31 and September 3, 7, 8 and 9, carloads of potatoes requiring reicing were moving in and out of St. Paul. On the above-mentioned dates the Carrier used persons outside the scope of the Clerks' Agreement to perform such work on a day to day basis. During the period involved, Roger Lyman, Eugene Larson, Wm. T. Hjorth, Jr., John Iserman, Robert Johnson, T. D. Wieden and R. L. Meyer were used to perform Ice House Laborer work as follows:

| Date | Persons Worked | Hours Worked |
|---------|---|---------------------|
| 8/9/57 | Larson, Hjorth, Iserman, Lyman | 1:00 pm to 9:00 pm |
| 8/12/57 | Larson, Hjorth, Iserman, Lyman | 7:00 pm to 3:00 am |
| 8/16/57 | Larson, Hjorth, Iserman, Lyman | 3:00 pm to 11:00 pm |
| 8/17/57 | Larson, Hjorth, Iserman, Johnson | 10:00 pm to 6:00 am |
| 8/19/57 | Larson, Hjorth, Iserman, Johnson, Wieden, Meyer | 2:00 pm to 10:00 pm |
| 8/20/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 2:00 pm to 10:00 pm |
| 8/23/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 2:00 pm to 10:00 pm |
| 8/24/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 9:30 am to 5:00 pm |
| 8/26/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 11:00 am to 7:00 pm |
| 8/27/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 11:00 am to 7:00 pm |
| 8/31/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 2:00 pm to 10:00 pm |
| 9/3/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 2:00 pm to 11:30 pm |
| 9/7/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 11:30 am to 7:30 pm |
| 9/8/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 4:00 pm to 12 mid. |
| 9/9/57 | Larson, Hjorth, Iserman, Johnson, Meyer | 5:00 pm to 1:00 am |

None of the above persons appeared on the Ice House Laborers' Seniority Roster for Seniority District No. 144, which covers Ice House Laborers in the Twin City Terminals, issued as of July 1, 1957. Only one, E. R. Larson, appears on the roster issued January 1, 1958.

EMPLOYES' STATEMENT OF FACTS: At the time this claim originated, the Carrier had five regular 7-day Ice House Laborer positions in effect at the Twin City Terminals, the rest days of which were included within two regular relief assignments. Those five regular and two relief positions were assigned as follows:

Ice House Laborers B. A. Homsher, seniority date of July 10, 1950; J. D. Wood, seniority date of December 18, 1946 and Edward Casey, seniority date of August 24, 1950, all in Seniority District No. 144, are employees regularly assigned to the work of icing cars at St. Paul. On each of the days involved, one or all of these employees were available but were not called to perform that work.

Employees Homsher, Wood and Casey submitted time slips to Superin-

the limitations of the Collective Agreement in the interests of efficiency and economy. There is no rule in the applicable Agreement which requires that work once assigned on an overtime basis may not be assigned at straight time rates. Where the Carrier can get the work done at straight time rates without violating a provision of the Agreement it is within its province to do so."

There exists no basis whatever for the claims and the Carrier respectfully requests a denial award.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: At the time claims here alleged were made, Carrier had five regular assigned 7-day Ice House Laborer positions; with five regular and two relief positions assigned, and with rest days included in the regular relief assignments. Such positions all confined to St. Paul, Minnesota. Claims as made were all on dates between August 9 and September 9, 1957.

The Organization, during the period involved on claim dates, contends that Carrier employed persons outside the Clerks Agreement, to work on a day to day basis to perform Ice House Laborer work required in re-icing arriving carloads of potatoes, moving in and out of St. Paul. It alleges that on claim dates, the regular assigned employees, were available on each of the claim dates, but were not used by Carrier. That as a result of such action by Carrier, it is contended that Carrier violated the provisions of the Scope Rule 1(a) and 1(e), Rule 2—Seniority Districts, Rule 32—Overtime and Rule 57—Date Effective and Changes.

Carrier contends that by reason of increased demand of service required of its ice house forces, due to arrival of many cars of potatoes, it was necessary to increase the labor force to properly serve its requirements. During the period involved here, Claimants performed overtime service and were properly paid for such service. Carrier denies it has violated provisions of the effective Agreement between, the parties as claimed. Carrier takes the further position that all employees doing the work complained of were bona fide employees under the Clerks Agreement. That under Rule 3(a) such employees secured seniority at the time such employees pay starts.

A review of the record here shows that the employees hired by Carrier, to augment its forces, were not employed on a day to day basis, as alleged. They were employed and used five days each week, with an additional two rest days. The record here shows that because of the increased work brought about, it was necessary that Carrier augment its regular assigned forces, in order to meet the increased service requirements. There is no evidence before us that such employees were used to the detriment of the regular assigned employees. During the period involved, the regular assigned Claimants were not affected, they performed their regular assignments, were allowed to perform some overtime work, for which they were properly paid.

It will be observed that claims as made, all request compensation at the penalty rates. Without writing a long discourse on Rule 9 (g) allegedly violated by Carrier here, we refer to Award No. 10299, which is a case involving the parties here, and the same effective Agreement. What the Division held in that award, in reference to Rule 9(g) is applicable here. Also Award No. 9766 is also applicable here, and involves the same parties, and effective Agreement.

We find that in view of the two applicable awards on this property, we have no alternative but to reaffirm such awards as applicable to the situation here, and that such alleged claims should be denied.

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 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 2nd day of April, 1963.