

Award No. 13192
Docket No. CL-12855

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4980) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, at Sacramento, California, when it arbitrarily removed Mr. H. J. Keiser, First Grade Mail Handler No. 102, from his position and required him to perform service on First Grade Mail Handler Position No. 98 for the purpose of absorbing overtime; and,

(b) Carrier shall now be required to compensate Mr. H. J. Keiser eight hours' additional pay at the pro rata rate of his position for December 23, 1959; and,

(c) Carrier violated the Agreement when it arbitrarily removed Mr. O. W. King, Second Grade Mail Handler No. 71, from his position and required him to perform service on First Grade Mail Handler Position No. 102 for the purpose of absorbing overtime; and,

(d) Carrier shall now be required to compensate Mr. O. W. King eight hours' additional pay at the pro rata rate of Position No. 102 for each date December 23, 24, 1959.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. At the time of this dispute the following employees and their positions were here involved:

OPINION OF BOARD: In December of 1959, at its Sacramento, California, Station, the Carrier augmented its mail-handling force by the addition of temporary foremen and mail handler positions in anticipation of the Christmas holiday increase in mail. Among these were the positions here designated as Nos. 98 and 102. Position No. 71 was a bulletined, regularly-assigned job. Nos. 98 and 102 were not bulletined as being of temporary duration under Rule 34. All were within the same seniority district and at the same location, i.e., the Sacramento Baggage Room.

Position No. 102 was classified as mail handler, first grade, with hours 9:30 P. M. to 5:30 A. M. Claimant Keiser was assigned thereto. He and his crew were used inside the mail room to load trucks and to assist on the platform and the mail belt.

Position No. 98 was also classified as mail handler, first grade, with hours 10:00 P. M. to 6:00 A. M. H. Crump was assigned thereto. He and his crew worked on the outside loading and unloading mail cars.

Claimant King was the regularly-assigned occupant of Position No. 71 — mail handler, second grade — hours 10:00 P. M. to 6:00 A. M. He, too, worked outside, loading and unloading mail cars.

On December 23, 1959, Crump was injured while enroute to work and was unable to report for duty. Claimant Keiser was moved outside the Baggage Room and performed the work Crump would have done had he reported. Claimant King was moved inside the mail room. He was also so used on December 24. Both Claimants were paid at the rates of first and second grade mail handlers, respectively.

The Employees allege a violation of Rule 22, entitled "Absorbing Overtime", which reads as follows:

"Employees shall not be required to suspend work during regular hours to absorb overtime."

The allegation is based upon the fact that two regularly-assigned mail handlers, first grade, on different shifts could have been used to perform Crump's work on an overtime basis.

To support the charge of rule violation, the Employees must show that a Claimant has been required to suspend work on his assignment and to perform the work of another position which, otherwise, would have to have been performed on an overtime basis by the incumbent of the latter position. Awards 7167, 5331.

The record in this case establishes that neither of the Claimants was required to suspend work on his assignment. Each worked his regular hours, and no one, including the incumbent of Position No. 98, worked any overtime. The fact that additional duties may have been imposed upon Claimants and that they were required to work inside or outside is not material. That Carrier management may add to, subtract from, or otherwise change the duties of a position and even require those duties to be performed at two different locations, as a general proposition, has been settled on this property. (See Award 8428, involving these same parties.) Nor is there any rule in the Agreement before us which expressly or impliedly requires this Carrier to pay the punitive rate for work which can properly be accomplished at the straight time rate. (Cf. Award 7227.)

In view of the foregoing, the Board finds no violation of Rule 22, as alleged.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1964.