

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Ross Hutchins, Referee

**PARTIES TO DISPUTE:**

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

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5197) that:

(a) The Carrier violated and continues to violate the rules of the Clerks' Agreement when it required W. A. Thorpe, Head Timekeeper at Elko, Nevada, to perform the duties in connection with the preparation of advertisements and assignments of Enginemen's vacancies and in the handling of Enginemen's Mileage Reports beginning April 10, 1961, which work had previously been performed by the Assistant Chief Clerk and continued to be performed by him except on such days as it was required to be performed by Head Timekeeper Thorpe, and

(b) Mr. Thorpe is entitled to and shall now be allowed the difference between the Assistant Chief Clerks' rate and that of the Head Timekeeper for each day of the violation beginning April 10, 1961, and continuing until the violation is corrected.

**NOTE:** Dates involved in this claim to be determined from a joint check of the Carrier's records.

**EMPLOYES' STATEMENT OF FACTS:** The Eastern Division Superintendent's Office is located in Elko, Nevada, where a group of clerical positions are located, including the following, which, on April 1, 1961, were held by the employees as indicated:

Position	Held By	Rate of Pay
Chief Clerk	J. L. Murphy	\$707 per mo.
Assistant Chief Clerk	M. T. Clark	21.85 per day
Head Timekeeper	W. A. Thorpe	21.57 per day

Immediately prior to April 1, 1961, these positions were all classified as five-day positions, and were assigned a work week of Monday through Friday.

**OPINION OF BOARD:** The Assistant Chief Clerk's workweek was changed from Monday through Friday to Tuesday through Saturday. The Assistant Chief Clerk's duties in connection with the advertising and assigning of Enginemen's vacancies and the regulation of Enginemen's mileage necessary to be performed on Monday was transferred to the Head Timekeeper, a lower rated employee. This claim is filed on behalf of Mr. Thorpe, the Head Timekeeper, for the difference between the Head Timekeeper rate of pay and the rate of the Assistant Chief Clerk.

The employees contend there has been a violation of Rule 11, which provides:

"Employees assigned temporarily to higher rated positions shall receive the higher rate. Employees assigned temporarily to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position, whether the regular occupant is absent or present; merely assisting a higher rated employee during a temporary increase in the volume of the work does not constitute a temporary assignment."

Claimant's reliance on Rule 11 is ill founded, because this docket involves a permanent, and not temporary, assignment. The Claimant's reliance upon Awards Nos. 2884, 4499 and 4500 is also fallacious because these awards involve temporary assignments.

The decisions of the quoted awards are directed to Rule 20 because the Claimants were denied their regular work. The Claimant in this docket cites Rule 20 (e), which is as follows:

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

But, no claim is made for loss of regular work in this docket.

The Claimant is respectfully referred to the awards cited above for the proper application of Rules 11 and 20 (e). Neither the legal theory set out in the awards quoted by the Claimant nor Rules 11 or 20 (e) match the facts of this case.

The Carrier says the Claimant urged Rules 7, 8 and 11 on the property. The Claimant, however, does not urge Rule 7 or 8 in his submission and neither Rule 7 or 8 are considered here.

Rule 13 does not appear to have been raised on the property by the Claimant, and is not considered here.

**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 no violation of the Agreement has been shown.

**AWARD**

Claim denied.

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

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.