

Award No. 13513
Docket No. U-13724

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood (**GL-5232**) that:

(a) The Carrier violated the rules of the Clerks' Agreement, including but not **limited** to Rules 11, **19(d)**, 20(e), 29 and 34, when it required Mr. D. L. Gregson, occupying position of Yard Checker on the 12:00 Midnight **to 8:00** A.M. shift at Stockton Yard, **to** leave that assignment in order **to** work a **short** vacancy on position of Train Desk Clerk on the same shift on June 23, 1961, and

(b) **Mr. Gregson** is entitled to and shall now be compensated at the straight time rate of his regular assignment of Yard Checker account denied the right to work his regular assignment on June **23, 1961**, plus additional half time at the rate of Train Desk **Clerk** account required to leave his regular assignment to work the latter position on that date.

EMPLOYEES' STATEMENT OF FACTS: On June 23, 1961, Mr. D. L. Gregson was holding a **regular** assignment **to position** of Yard Checker at Stockton Yard, rate \$19.33 per day, which he had **secured** as a result of **exercising his** seniority, which seniority date **was** May 8, **1955**.

The position of Train Desk Clerk at Stockton Yard, rated at \$19.93 per day, **with** hours 12:00 Midnight to **8:00** A.M., **was** held by Clerk W. **B. Gifford**, whose **seniority** date was October 18, 1960. Mr. Gifford laid off account illness and **Mr. Gregson** was required to leave his **regular** assignment **as** Yard Checker in order to work the short **vacancy** on the position of Train Desk Clerk in the absence of Mr. **Gifford**. Mr. **Gregson** filed "Statement of Overtime Claim" reading:

"**a/c** stepped from my regular assignment of Yard Checker, 12 **A.** **to 8** A.M. **to** position of train-desk clerk 12 A. to 8 A.M. under protest, I **claim time** and one half for position of train-desk plus straight time for regular position?"

(3) Under Award 4500, the Organization and your Board found that other **employees** could have worked the vacancy on overtime. In the instant dispute no qualified employe was available to work the vacancy on overtime and overtime was actually paid **to** another employe **to** All the vacancy on claimant's Yard Checker assignment. No reference in the handling of this dispute on the property was made by either the Local Chairman or the General Chairman that claimant was required to suspend work to absorb **overtime** nor was there any intimation that overtime was allegedly absorbed **as** Carrier pointed out in its decision dated January 30, 1962.

Thus, it is clearly evident that the Organization is citing the three awards **as** precedents without considering either the underlying facts or its own arguments therein.

Further, neither Award 2884 nor Awards 4499 and 4600 support the claim here presented for the payment of time and one-half to claimant when he was used on the vacancy on the position of Train Desk Clerk. In fact, **Award** 2884 specifically denied the portion of the claim involving the payment of time and one-half.

The instant claim for two and one-half days' pay for one day's (eight hours) work is totally without support under the Agreement and Carrier strongly urges it be denied for the following reasons:

(1) The correspondence in connection with this claim quoted in Carrier's **Statement** of Facts reveals no dispute exists that no other qualified employe **was** available to All the vacancy on the position of Train Desk Clerk.

(2) Claimant was properly compensated at the higher rate of the two positions under Rule 11; this rule **does** not support the claim for two **days'** pay for one day's work.

(3) Claimant worked each work day of his work week, including June 23, 1960, and the number of work days during that period were **not** reduced below five as provided in Rule 19. Further, his compensation for the week exceeded that provided by Weekly Guarantee. Paragraph (d), Rule 19, does not provide support for the claim for two days' pay for one day's work.

(4) **Claimant** was not suspended from work during regular **hours** to absorb overtime nor has any evidence been presented to Carrier that **over-**time was absorbed by using claimants. Further, Carrier paid overtime to Castle for **filling** claimant's assignment under paragraph (a), Rule 20.

(5) Neither Rule 29 nor Rule 34 provide for the additional compensation here claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that the Carrier violated Rules 19(d) and 20(e) when it assigned the Claimant to work a short vacancy on the position of Train Desk Clerk on the same shift.

"RULE 19(d). WEEKLY GUARANTEE

Nothing herein shall be construed to permit the reduction of days for the **employees** covered by this agreement below five (6) per week, except that this number may be reduced in a week in which

holidays occur by the number of such holidays, as specified in **Rule 22**. Such reductions may be made only when a **specified** holiday is observed on an assigned work day of an individual employee."

Award 10594 held that the above rule does not give the employee an absolute right to work their assigned position **five** days per week.

Award 2884 which involved a similar dispute between the same parties held:

"We think that, in accordance with the universal rule of interpretation that all the words of a contract must be given effect if possible, the Carrier should not be required **to** pay a temporarily transferred employee **overtime** rates where it is shown that the transfer was not made for the purpose of avoiding the payment of overtime. Otherwise the words 'to absorb overtime' with which the third paragraph of Rule 20 concludes, are denied **any** effect."

Therefore, a violation of the Agreement would occur only when the Carrier suspended work for the purpose of absorbing overtime.

The Petitioner relies on Awards 4499 and 4500 between the same parties. It must be noted in those two disputes that the Claimant's positions were blanked. In this dispute the Claimant's position was not blanked. The Carrier paid the overtime rate to the employee who worked the position. This is sufficient evidence to establish the fact that the **Carrier** did not suspend work to absorb overtime.

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 29th day of April 1965.