

Award No. 13604
Docket No. CL-12543

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4906) that:

1. Carrier violated the Clerks' Agreement when, on Monday, March 7, 1960, it moved Clerk J. L. Jirik, Batesville, Arkansas, from his regular assignment to a temporary vacancy, in violation of Rule 9 and other related rules of the Clerks' Agreement;

2. Carrier violated the Clerks' Agreement when on Saturday, March 12, 1960, it refused request of Clerk J. L. Jirik to return to and work his regular assignment on the rest days of the position to which he had been moved illegally and a work day on his regular assignment;

3. The Carrier compensate Clerk J. L. Jirik for Saturday, March 12, 1960, for eight hours at the pro rata rate of \$2.3925 per hour, amount \$19.14, account violation of Rules 9 (b), (c), 25 (c) and (b).

EMPLOYES' STATEMENT OF FACTS: On the dates involved in this dispute and claim, the clerical force subject to the scope and operation of the Clerks' Agreement at Batesville, Arkansas, consisted of the following positions located in the Agent's office:

Position	Assigned Hours		Meal Period		Number of Days Per Week	Rest Days
	From	To	From	To		
Cashier	8:00AM	5:00PM	12:00N	1:00PM	5	Sat. & Sun.
Rate Clerk	8:00AM	5:00PM	12:00N	1:00PM	5	Sat. & Sun.
Yard Clerk	7:30AM	4:30PM	12:00N	1:00PM	5	Sat. & Sun.
Gen. Clk.	8:00AM	5:00PM	12:00N	1:00PM	5	Sun. & Mon.
Trucker	6:30AM	3:30PM	11:30AM	12:30PM	5	Sat. & Sun.
Vehicle Clk.	8:00AM	5:00PM	12:00N	1:00PM	5	Sat. & Sun.

Those positions are on the Eastern Division Station and Yards seniority district and the occupants of those positions are listed on the Eastern Division Station and Yards seniority roster.

pay when that failure results solely from the employee's failure to request same.

Claimant's regular assignment was rated at \$18.12 per day four days per week, \$19.14 per day one day per week. The temporary vacancy on which he worked was rated at \$18.12 per day. It is interesting to note that if the Employees' position is sustained and the Board sustains the claim for one day's pay, holding that Rule 9 (b) is not applicable, then the time and one-half rate is not applicable for March 7 and 14, 1960. Under such circumstances it would be necessary to deduct the overtime payment of March 7 and 14, 1960, (a total of \$18.12) and the only payment to be made claimant would be the difference between instant claim for \$19.14 per day and the overpayment of \$18.12, or a total of \$1.02.

In view of the foregoing facts, Carrier respectfully requests that this dispute be dismissed because of the conflict in statements concerning the facts, and that in any eventuality the claim must be denied because claimant failed to request this day of work as required by the Agreement, Carrier has complied with all of the provisions of the Agreement and a sustaining award would distort the accepted application of a clear and unambiguous rule.

FINDINGS: The Third Division of the Adjustment Board finds:

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the complainant party; and

The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-operating Employee Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 18):

"FINDINGS: (ART. V) The issue before the National Disputes Committee raised in this dispute is whether the Assistant General Manager's letter of June 8, 1960 to the General Chairman of Clerks was in compliance with the requirements of paragraphs 1 (c) and 1 (a) of Article V of the August 21, 1954 Agreement (Rule 43 of the clerks' schedule agreement) that a decision on appeal, disallowing a claim or grievance, give the reason for the disallowance.

The pertinent paragraph of such letter was as follows:

'We are in support of Superintendent's decision, therefore, your appeal of the above claims for additional payment is respectfully declined.'

Employees contend that this did not comply with the requirements of Article V in that the Assistant General Manager did not state his reason for disallowing the claim.

Carrier contends that the language indicates that the Assistant General Manager adopted the Superintendent's decision, including his reasons.

The record shows that the Superintendent gave reasons for denying the claim in accordance with the requirements of Article V.

The National Disputes Committee rules that it was not incumbent upon the Assistant General Manager to repeat the reasons given by the Superintendent in his original decision. His statement that he supported such decision was the equivalent of stating the reasons it gave as his own reasons for denying the appeal.

DECISION: The Carrier's letter of June 8, 1960 constituted a proper denial on appeal of the claims involved, in compliance with Article V of the August 21, 1954 Agreement.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

Under date of April 20, 1965 the parties jointly addressed a formal communication to the Secretary of the Third Division requesting withdrawal of this docket from further consideration by the Division, which request is hereby granted.

AWARD

Docket dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1965.