

Award No. 13617
Docket No. CL-13802

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 EMPLOYES**

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5269) that:

(1) The Carrier violated the controlling agreement between the parties when it failed to work Thomas W. O'Dea, Utility Clerk in the Superintendent's Office at Anaconda, Montana, overtime on December 24 and 31, 1961 and January 1, 1962.

(2) The Carrier shall now be required to compensate Utility Clerk O'Dea eight (8) hours at the overtime rate for each day, December 24 and 31, 1961 and January 1, 1962.

EMPLOYEES' STATEMENT OF FACTS: Claimant O'Dea is regularly assigned to the position of Utility Clerk in the Superintendent's Office at Anaconda, Montana, and is under the supervision of Mr. O. R. Sandstrom, Mechanical & Electrical Superintendent. Since April 14, 1961 the Utility Clerk's position is a regular five-day position with Saturday and Sunday as rest days. Prior to that date it was a seven-day position. For approximately 4½ hours per day Claimant O'Dea is used exclusively five days per week to drive the company mail truck, picking up and delivering mail between the Post Office and various company offices and departments, and in addition thereto, picking up and delivering waybills between the Anaconda Freight Office and East Anaconda Yard. The balance of his day is spent performing general clerical work in the Superintendent's Office.

At the Anaconda Freight Office, a department separate from the Superintendent's Office, there is a Bill Clerk's position regularly assigned to Norman Rustad coming under the supervision of Agent H. R. Carlson with major assigned duties of checking rates, routes and extending charges on all outbound waybills, preparing and typing waybills and making interchange reports. The Bill Clerk's position is a six-day position with Sunday and Monday as rest days. It is relieved on Monday by Relief Bill Clerk Ronald Pritchard. The position is blanked on Sunday.

(2) Rule 11 and the Memorandum of Agreement dated December 17, 1954 signed in connection therewith are not applicable to this claim.

(3) Rule 3 establishes one seniority district covering all positions under the scope of the agreement.

(4) Rule 30 of the Schedule supports the manner in which the service was protected on the three days in question.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 30 of the Agreement states:

" * * * except that in cases where rest day or holiday overtime service is necessary which affects more than one position in an **office or department**, the incumbent of the position to which the greatest amount of such work is regularly attached shall be used, but may perform any other necessary work pertaining to the other positions in that **office or department** * * *." (Emphasis ours.)

We find there was overtime work performed by an employe of a different office. Under this Agreement the Claimant should have been called to perform the work.

Following Awards 13191, 13312, 13177 and others, the pro-rata rate will be allowed instead of the punitive rate for December 24 and 31. The overtime rate will be allowed for January 1, 1962.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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