

Award No. 13695
Docket No. CL-13762

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5235) that:

(a) Carrier violated the Clerks' Agreement when it required and continues to require hourly rated freight platform employees at Las Vegas Freight Station to report at a regular starting time and then releases such employees before they have performed eight (8) hours' service, and fails and refuses to pay such employees a minimum of eight (8) hours' pay per day.

(b) Carrier shall reimburse employees R. A. Cole, W. H. Clemmons, D. O. Gray, R. A. Whitehead, H. Thompson, L. Syphus, M. Thompson and/or their successors so required to report at a regular starting time at the Las Vegas Freight Station and released prior to performance of eight (8) hours' service, for the difference between what they earned and been paid and what they would have earned and been paid had they been permitted to work eight (8) hours.

(c) Carrier shall make adjustment claimed in Item (b) above retroactive to April 3, 1961, in consonance with claims filed by the Division Chairman with the Division Superintendent on May 27, 1961.

EMPLOYEES' STATEMENT OF FACTS: Prior to and subsequent to the date claims were presented to Division Superintendent by Division Chairman, i.e., May 27, 1961, the employees named in Item (b) above and/or their successors, have been regularly required to report daily at Las Vegas Freight Station for duty as Truckers at regular starting times and were released from duty prior to expiration of eight (8) hours, being compensated only for actual service performed. This condition continued in effect from at least April 3, 1961, and remains in effect to date of this submission.

POSITION OF EMPLOYEES: That Carrier violated rules of the agreement between the parties effective May 1, 1955, except as amended and supplemented, copies of which have heretofore been furnished the Board and by this reference thereto, are made a part hereof.

allowances specified in paragraph (c) of Rule 37. The claims are without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant claim there is no dispute as to the status of the Claimants. They are temporary employees, and the issue is, should they be compensated under the provisions of Rule 37 (b) or 37 (c) of the current agreement, quoted below:

“(b) Regularly assigned hourly rated employees and temporary hourly rated employees used with regularity who are required to report at a regular starting time will be paid a minimum of 8 hours unless they lay off of their own accord or are prevented from performing service by conditions beyond the control of the carrier.

(c) Fluctuating or temporary forces, other than those referred to in Section (b) of this rule, will be paid a minimum of 2 hours for 2 hours' work or less; if worked in excess of 2 hours, but not in excess of 4 hours, a minimum of 4 hours will be allowed, and if worked in excess of 4 hours, a minimum of 8 hours will be allowed.”

In order to qualify the Claimants for compensation under the provisions of paragraph (b) above, and therefore pay them a minimum of eight hours for each day's service, the Organization must show they are used with regularity, and are required to report at a regular starting time. We find the Organization failed to meet the burden of proof thus imposed upon it. The record shows the Claimants are selected each day from those who voluntarily present themselves for the service; that they acquire no seniority; that they are paid at the end of each day's work; that no regular assignments are made. The Board, on the record, finds and must hold that the Claimants are “fluctuating and temporary forces” as contemplated in Rule 37 (c) and should be compensated under its provisions. In the circumstances found, the claims must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 30th day of June 1965.