

Award No. 13893
Docket No. CL-13861

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5278) that:

(a) Carrier violated the Rules of the Clerks' Agreement at Eugene, Oregon, when on May 20, 1961, it required Mr. D. P. Hoover to suspend work on his position during the regular hours for the purpose of absorbing overtime Train Clerks otherwise would have earned; and

(b) Carrier shall now be required to allow Mr. D. P. Hoover eight (8) hours' additional compensation at pro rata rate of Train Clerk.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. At the time of this dispute the following positions, here involved, were in existence:

Position	Hours	Rest Days	Rate of Pay	Incumbent
300 Chief Crew Dispatcher	7:45 A. M.- 3:45 P. M.	Sat.-Sun.	\$21.92	L. L. Holgate

Duties: Handles all callers and crew dispatchers.

Prepares or checks the 254 sheets and checks time slips of the switchmen. (Form 254 is the sheet on which the switchmen register their crew, engine, engine crew, tie up time, cannonball claims, etc.)

" . . . We hold the duties of assisting the train clerks were not assigned to claimant until August 5, subsequent to date of this claim, and as such duties were not a part of his regular assignment. . . ." (Emphasis ours.)

The general yardmaster in charge at the location involved clearly refutes that contention in his statement of July 18, 1961 (Carrier's Exhibit E), reading in pertinent part:

" . . . since that date, May 20, 1961, and each Saturday thereafter to the present . . . after completing the work . . . as Chief Crew Dispatcher . . . has reported on each Saturday since May 20, . . . to assist with yard office duties." (Train Clerk.)

While we there have a dispute in pertinent facts, it is significant to note that in that portion of General Chairman's letter quoted above he clearly admits that had Claimant been assigned the disputed work on a regular basis, that is, each and every Saturday between May 20 and August 5, the claim would be without basis. It is Carrier's position, amply supported by Carrier's Exhibit E, that Claimant was regularly assigned train clerk duties on each Saturday subsequent to May 20, 1961, and that being so, by Petitioner's own admission, there is no basis for claim.

The handling accorded the Claimant at Eugene, Oregon, which gives rise to this claim, conformed precisely to the Division's holding in its Award 5331 denying claim brought to the Division by Petitioner. In that case, as in the instant one, Petitioner relied partially upon the "Absorbing Overtime" rule to support its position. The following is quoted from that Opinion:

"Except insofar as it has restricted itself by the Collective Bargaining Agreement, or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy."

Carrier was not restricted by the agreement applicable to the employees here making claim, nor was it restricted by law in handling forming basis of this claim.

Carrier submits it has clearly shown herein that the Claimant in this case was properly and regularly assigned the additional clerical work of lower rate classification for which he was paid at rate of position occupied on a regular Saturday basis on date of claim to fill out his assignment and that no one in the lower rate classification was adversely affected in any manner as a result of such handling.

CONCLUSION

The claim in this Docket is entirely lacking in either merit or agreement support, and Carrier requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: At the time the subject dispute arose, Chief Crew Dispatcher Position No. 300 at Eugene, Oregon, was protected each

Saturday by Relief Position No. 154, the regular incumbent of which was Claimant D. P. Hoover. The Organization contends the Carrier violated the labor agreement on Saturday, May 20, 1961 by requiring Claimant Hoover to suspend his regular duties and go into the yard office to perform Train Clerk's work. Petitioner relies on Rule 9 (e) (Regular Relief Assignments) and Rule 22 (Absorbing Overtime).

The Carrier responds that Claimant Hoover was properly instructed to fill out his idle time on Saturday, May 20, 1961, and each subsequent Saturday, by assisting with other clerical work, namely, train clerk duties such as matching up scale tickets and applying them to waybills, writing car tags, etc. Carrier notes that the Crew Dispatcher's office and the yard office (where the subject train clerk work is performed) are on the same floor in the same building, with a short hall between them. Carrier further notes that on the date of the claim a full complement of six Train Clerks were on duty in the yard office during the hours Claimant Hoover was on duty.

Rule 22 reads:

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

The evidence indicates that some of the duties performed by the regular incumbent of Chief Crew Dispatcher Position No. 300 Monday through Friday were not normally performed on Saturday, with the result that Claimant Hoover had a certain amount of idle time. Nevertheless, the parties are in dispute as to whether Claimant was required to assist Train Clerks only during his idle time, or whether he was required to temporarily abandon Chief Crew Dispatcher work in order to assist Train Clerks. The parties also are in dispute as to whether Claimant was instructed on Saturday, May 20, 1961, to assist Train Clerks on a regular basis, or only on that day. The weight of the evidence is that on May 20, 1961, he was instructed to do so on a regular basis, to the extent he had time to do so.

But, in any event, the Petitioner has not proved that if Claimant had not assisted Train Clerks on the date of the claim, the disputed work would have been done on overtime. For this reason alone, it must be held that Rule 22 was not violated. Thus, it is unnecessary to discuss other aspects of the absorption of overtime question.

The portion of Rule 9 (e) relied on by the Petitioner consists of the paragraph reading:

"Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

Petitioner contends that Carrier's instructions violated the foregoing provision because they required Claimant Hoover to work at a different location and to perform duties neither assigned to nor performed by the regularly assigned Chief Crew Dispatcher whom Claimant relieved.

Since Claimant performed the disputed Train Clerk duties in the same building and on the same floor at Eugene in which the Crew Dispatcher office

is located, it cannot be said that he was assigned to a different "work location" within the accepted meaning of that term. Thus, the question of the Carrier's right to assign Claimant to an additional work location is not involved here.

With respect to the contention that Claimant Hoover was assigned different duties than those performed by the regular Chief Crew Dispatcher whom he relieved, the evidence is that Claimant continued performing Chief Crew Dispatcher work on Saturday, May 20, 1961 and on subsequent Saturdays and—in addition—was given standing instructions to perform work normally done by Train Clerks, to the extent he had time to do so. The Train Clerks thus assisted by the Claimant are in a lower rated classification in the same craft and class, and in the same seniority district, as the aggrieved. We do not construe Rule 9 (e) as prohibiting the Carrier from adding to a relief position certain duties which are not performed by the regular position being relieved. The rule does not say that a relief position may not perform duties in addition to, or other than, those of the position being relieved, so long as duties of the regular position also are being performed. Thus, we find no violation of Rule 9 (e) in the subject instance.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1965.