

Award No. 14114
Docket No. CL-15190

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5625) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at San Francisco, California, when on December 9, 10, 16 and 17, 1961, it required employees G. Gibson and D. Clark, Carload Checkers, to suspend work during regular hours to perform service on TOFC Position No. 606 for the purpose of absorbing overtime thereon the incumbent thereof, M. Kohn, would have otherwise earned if such absorptions had not taken place; and,

(b) The Southern Pacific Company shall now be required to allow M. Kohn eight (8) hours' additional compensation at the time and one-half rate of Position No. 606 each date December 9 and 10, 1961, account not called thereto in accordance with Agreement provisions; and,

(c) The Southern Pacific Company shall now be required to allow G. Gibson four (4) hours' additional compensation at the time and one-half rate of Carload Checker Position No. 639 each date December 9 and 16, 1961, account required to suspend work during regular hours for the purpose of absorbing overtime on Position No. 606; and,

(d) The Southern Pacific Company shall now be required to allow D. Clark two hours and fifty minutes at the time and one-half rate of Relief Position No. 1 on December 10, 1961, and three hours at the time and one-half rate of Relief Position No. 1 on December 17, 1961, account required to suspend work during regular hours for the purpose of absorbing overtime on Position No. 606.

EMPLOYEES' 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

marized to say that 'requiring an employe to suspend work on his assignment and perform work of other positions which work would otherwise have had to be performed on an overtime basis' violated the Rule 'if the work involved was not assigned to the positions of the claimants.'

So far as can be reasonably inferred, the 'claimants' referred to in the quotation above were employes who were required to do the work, not those who were deprived of overtime thereby. As regards the instant case, this would be Tapley. Was the work involved here (at Eloy) assigned to Tapley? Not originally, certainly, but on March 10, 1952, and thereafter (till April 4, 1952), yes. It follows that, as regards Tapley, Rule 22 in the instant case was not violated. He cannot be said to have suspended work during the regular hours of his changed assignment.

Award 5331 says nothing directly helpful about the situation in which the other claimant here, Hoben, was involved. But, if Tapley is held not to have suspended work during the regular hours of his changed assignment, then the overtime work that Hoben would have worked in the absence of such change cannot be said to have been lost because of a suspension of Tapley's work. Rule 22 was not violated in respect to Claimant Hoben.

The Board rules that neither claim can be sustained."

There are issues raised by the facts in the claim disposed of by Award 8428 which are not present in this Docket; however, the basic premise upon which Petitioner relies is common to the within claim and claim disposed of by Award 8428 and this Division's interpretation of the Absorbing Overtime rule in that Award is equally applicable here. Particular attention is directed to the fifth paragraph quoted above.

Carrier submits it has clearly shown herein that Claimants Clark and Gibson (Carload Checkers) were properly required to perform the work here in dispute on the dates involved in this case and that Claimant Kohn was not adversely affected inasmuch as they performed no work for which Claimant Kohn stood on those dates, the rest days of his position of TOFC Clerk.

Insofar as the claim in this docket for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division—see Awards 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748, 9749 and 10990.

CONCLUSION

The Carrier holds that the claim here presented is without merit or Agreement support and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The position of the Petitioner is fully set forth in the Statement of Claim. The same or similar issues presented in the instant Claim, involving the identical parties and on the same property have

been before this Board on several occasions and have been thoroughly discussed in the Awards. See Award 8428, Daugherty; Award 13186, West; Award 13192, Coburn; 13490, Dorsey.

A further discussion here would be merely cumulative. The foregoing Awards have established a definite pattern and precedent on this property. There is nothing to indicate they were palpably erroneous. Consequently, we are forced to a conclusion that the Agreement was not violated.

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 25th day of January, 1966.