

Award No. 15215
Docket No. CL-14853

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5496) that:

(a) The Carrier violated the provisions of the Agreements extant between the parties when it permitted and/or required an employe outside the agreement to handle the Enginemen's Board at Winnemucca, Nevada during the period February 12, 1963 to 3:30 P.M., March 4, 1963.

(b) As a result of the aforementioned violation Mr. A. J. Norgaard be additionally compensated as follows:

8 hours at the Roundhouse Clerk's rate of pay of \$20.99 per day for each Monday and Tuesday, during the period covered by Claim (a); and

8 hours at the Roundhouse Clerk's overtime rate of \$31.49 per day for each Wednesday, Thursday, Friday, Saturday and Sunday during the period covered by Claim (a) (less the \$2.40 he has already been allowed); and

a minimum call for each occasion on which the Mechanical Foreman, outside of his assigned hours, changed the Enginemen's Board or furnished a list of the Enginemen on the Board to the Yard Clerks during the period covered by Claim (a), including but not limited to the following occasions:

Date	Time	Date	Time
2-13-63	7:30 PM	2-23-63	4:00 PM
2-14-63	8:00 PM	2-24-63	4:00 PM
2-16-63	4:00 PM	2-25-63	3:30 PM
2-19-63	9:30 AM	2-26-63	10:00 AM
2-19-63	8:00 PM	2-28-63	9:00 PM
2-22-63	8:00 PM		

NOTE: Other dates and times when Foreman May changed the Enginemen's Board or furnished a list to the Yard Clerks of enginemen on the Board to be determined by a joint check of the records.

EMPLOYEES' STATEMENT OF FACTS: Carrier, in recent years, has moved the Roundhouse Clerk into the office space occupied by the Yard Clerks at Winnemucca, Nevada, so that at the time covered by the instant claim they are working, approximately twelve feet apart, in the same room and in sight of each other.

Through Clerks' Circular No. 1, dated February 5, 1963 (Employees' Exhibit 1), the position of Roundhouse Clerk at Winnemucca, in Seniority District 13, was advertised as "Temporary—60 days", rate of \$20.99 per day with hours of 3:30 P. M. to 12:00 Midnight, rest days of Saturday and Sunday. Bids were to close at 8:00 A. M., February 11, 1963. Mr. A. J. Norgaard bid for and was awarded this position on Mechanical Department Clerks' Circular No. 2, dated February 12, 1963. However, he was not permitted to assume that assignment until 3:30 P. M., March 4, 1963.

On March 18, 1963, Mr. Norgaard addressed a letter jointly to Messrs. E. T. Cuyler and J. F. Lynch, Carrier's Chief Mechanical Officer and Eastern Division Superintendent, respectively (Employees' Exhibit 2), wherein he contended that as a result of his not having been permitted to assume his assignment of Roundhouse Clerk at Winnemucca until March 4, 1963, a violation of the Clerks' Agreement and the Agreement of August 24, 1949, ensued in that the work of handling the Enginemen's Board was performed by the Mechanical Foreman. In that letter he filed a request for additional compensation as set forth in Claim (b).

Through his letter of April 16, 1963 (Employees' Exhibit 3), Superintendent Lynch declined this claim. The last paragraph read:

"However, under provisions of Paragraph B, Rule 31, you are entitled to the higher rate of pay of Roundhouse Clerk while you were held on your Relief Assignment, February 20 to March 3, 1963. You will be compensated in the amount of 36 cents per day for February 20, 21, 27 and 28. Also 24 cents per day for February 24, 25, 26 and March 3, 1963."

Chief Mechanical Officer Cuyler, through his letter of April 19, 1963 (Employees' Exhibit 4), also declined the claim.

Claim was appealed to Mr. W. A. Tussey, Assistant to General Manager—Labor Relations, the highest officer of the carrier authorized to handle claims on the property, through the General Chairman's letter of June 11, 1963 (Employees' Exhibit 5). It was discussed in conference with Mr. Tussey's assistant, Mr. R. Adams, on June 25, 1963, and declined through Mr. Tussey's letter of July 15, 1963 (Employees' Exhibit 6).

During the conference of June 25, 1963, Mr. Adams had stated that the position of Roundhouse Clerk at Winnemucca was filled by furloughed clerk Mrs. Helen E. May, who worked it during the following periods in 1963:

February 4 through 8, inclusive,
February 11 through 15, inclusive,
February 18 through 22, inclusive, and
February 25 through March 1, inclusive.

may inform the Yard Office of Enginemen to be called. They may inform Enginemen who call up as to their status on the Board, but they shall not perform other routine clerical work.

This Agreement is without prejudice to any claim now pending or that may hereafter be filed for days that have been blanked prior to September 1, 1949, or positions that have heretofore been abolished.

Any change in any of the above positions shall have the effect of automatically cancelling this Memorandum of Agreement or it may be cancelled at any time by ten days' written advance notice, when served upon the other, by either party signatory to this Agreement.

This Agreement shall become effective as of September 1, 1949, subject to the cancellation clause contained above.

Signed at Sacramento, California, August 24, 1949."

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of record reveal that Claimant, a Seniority District 19 employe, bid for temporary vacancy on a position in Seniority District 13. Since there were no furloughed District 13 employes, the vacancy was awarded to Claimant by bulletin dated February 12, 1963.

However, due to the fact that there were no furloughed District 19 employes, Carrier was unable to transfer Claimant to the District 13 position until March 4, 1963, when it was able to employ an individual for Claimant's regular position in District 19.

During the interim and before, Carrier filled the vacancy on the District 13 position by employing an individual therefor until Claimant was transferred to the position.

The Employes contend that the individual employed for the District 13 position was not a bona fide employe, asserting she filled the position for only a portion of the day, and that the duties were otherwise performed by the foreman.

Carrier asserts that the individual filled the position for the full tour, performing all the duties thereof and that the foreman was merely instructing.

This Board has no means of resolving such conflicts in fact and as there is otherwise insufficient evidence in the record, the claim will be dismissed.

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 Petitioner failed to prove that Agreement was violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1967.