Award No. 17150
Docket No. CL-16126

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, 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-5903) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Los Angeles, California, when on June 21, 1962, it failed to call the senior employe to a vacancy on a position of Indesk Clerk; and,

(b) The Southern Pacific Company shall now be required to allow Mr. Leland W. Altizer eight hours' additional compensation at the applicable time and one-half rate of Indesk Clerk on June 21, 1962.

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

On June 21, 1962, Carrier established an extra position of Indesk Clerk for one day only. Assigned hours were 11:00 P.M. to 7:00 A.M. Carrier used employe R. M. Mauldin, regular assigned Indesk Clerk, seniority date July 17, 1961, notwithstanding employe Leland W. Altizer, seniority date October 19, 1941 (hereinafter referred to as the Claimant), was senior, qualified and available. Claimant at this time was the regularly assigned incumbent of IBM Train Clerk position, hours 7:00 A.M. to 3:00 P.M.

By letter dated July 12, 1962, to Mr. J. H. Long, Superintendent, Los Angeles Division, Claimant's union representative, Mr. H. M. Chaney, filed claim alleging violation of Rule 26 and correlated rules of the Agreement.

On August 14, 1962, Mr. Long had this to say:

"This will confirm our conference held on this claim August 13, wherein I stated to you that there were three Indesk Clerks on each shift and that any overtime falls to the senior Indesk Clerk available for call. The overtime call on June 21, 1962, was classified overtime of Indesk nature and Clerk Mauldin, being the senior available Indesk Clerk, was properly called ahead of Clerk Altizer.

all the Indesk Clerks on that shift would be an inadequate force to accomplish all the anticipated Indesk Clerk work to be done and requested that Clerk Mauldin, having just completed his assignment for the day on Indesk Clerk Position No. 174, 3:00 P.M. to 11:00 P.M., remain on duty to assist with the increased work load. Clerk Mauldin, being the senior available assigned Indesk Clerk at 11:00 P.M., June 20, 1962, performed the requested service and worked until 7:00 A.M., June 21, 1962. He claimed and was allowed eight hours' overtime at the rate of his position, Indesk Clerk No. 174, 11:00 P.M., June 20, 1962, to 7:00 A.M., June 21, 1962.

3. By letter dated July 12, 1962 (Carrier's Exhibit "A"), Petitioner's Division Chairman submitted claim to Carrier's Division Superintendent on behalf of Claimant L. W. Altizer alleging violation of Rule 26 of the current agreement, contending that claimant was available for call and should have been used for the overtime work involved.

By letter dated August 14, 1962 (Carrier's Exhibit "B"), the claim was denied by Carrier's Division Superintendent on the basis that any overtime for the purpose of performing Indesk Clerk work fell to the senior Indesk Clerk available for call; that the work to be performed was classified as Indesk Clerk work; and that the claim was not supported by Rule 26 or any other provision of the current Clerks' Agreement.

By letter dated August 22, 1962 (Carrier's Exhibit "C"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, stating therein that the Division Chairman's letter dated July 12, 1962 to the Superintendent (see Carrier's Exhibit "A") was to be considered embodied as part of the appeal.

By letter dated September 22, 1964 (Carrier's Exhibit "D"), the claim was denied by Carrier's Assistant Manager of Personnel, because:

> ". . . inasmuch as the employe used under the call rule on date involved was the senior available Indesk Clerk who stood to perform work within the classification of said position and no provision of the Clerks' Agreement required that claimant be called for service for which he did not stand."

While immaterial insofar as the outcome of this case is concerned, as a matter of information, further investigation has established that the date of occurrence forming basis of the claim should be Wednesday, June 20, 1962, instead of Thursday, June 21, 1962, as indicated in the Statement of Claim.

(Exhibits not reproduced.)

OPINION OF BOARD: A careful examination of the record before us reveals that Claimant failed to meet the burden of proving a superior right to the work performed. Seniority, standing alone, is not sufficient. The claim must therefore 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 the Agreement was not violated.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.