



**Award Number 17825**

**Docket Number CL-18295**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur W. Devine, Referee**

**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL 6594) that:

- (1) Carrier violated the terms of the Agreement between the parties on January 11, 1968 and January 18, 1968 when it called a junior employe on the claim dates to perform service at Kansas City, Missouri.
- (2) Claimant A. D. VanLerberg now be allowed one day's pay at the rate of Position No. 11 in addition to all other earnings on each of the claim dates January 11, and January 18, 1968 account this agreement violation.

**EMPLOYEES' STATEMENT OF FACTS:** On January 11 and January 18, 1968, the regularly assigned occupant of Position No. 11 in the local Freight Office at Kansas City, Missouri laid off and there were no available qualified extra employes in the freight house to work the position on an overtime basis. It, therefore, became necessary to go to the yards and call an employe to perform the duties of Position No. 11 on the claim dates in question.

It has been understood in the past that in the Kansas City, Missouri Terminal there were three distinct classes of service: (1) Those positions in the local Freight Office; (2) those positions working in the yards; and (3) those positions assigned at the freight dock. This understanding has not been changed even though the freight house is no longer in existence.

In this instance, as stated above, there were no extra available qualified employes from the freight house to perform this service and Carrier went into the yard classification to call an employe to fill the vacancy. In both instances, a junior employe, Mr. M. V. Kelly, was used in preference to Claimant VanLerberg who was available and qualified to perform the service, in violation of the seniority rules of the Agreement and Rule 48. Both of these employes were working in the yard classification of service, Mr. VanLerberg being assigned the position of Relief Caller and Mr. Kelly assigned to the position of Lead Clerk No. 19. Mr. Kelly has a seniority date of July 13, 1966 and Mr. VanLerberg has seniority dating from December 5, 1953.

**OPINION OF BOARD:** The claim herein arose in connection with the filling, on the two dates involved, of position of Utility Clerk Position No. 11 in the agent's office of Carrier's Rosedale Yard at Kansas City, Kansas, with assigned hours 8:15 A.M. to 4:45 P.M., with 30 minutes for lunch.

The Claimant, A. D. VanLerberg, was the regularly assigned occupant of Relief Caller Position No. 3, which relief position performed service on three caller positions assigned in Carrier's Nineteenth Street Yard, which is located in the uptown area of Kansas City, Missouri. The employe who was used to work Utility Clerk Position No. 11 on the claim dates, M. V. Kelly, was regularly assigned to Lead Clerk Position No. 19 in Carrier's Rosedale Yard, with assigned hours 11:00 P.M. to 7:00 A.M. On the two dates involved, Thursday, January 11, 1968, and Thursday, January 18, 1968, the Claimant also worked 11:00 P.M. to 7:00 A.M. on his relief assignment. The Petitioner contends that claimant VanLerberg, being senior to Kelly, should have been used on the Utility Clerk position.

The Petitioner states that it has been understood in the past that in the Kansas City, Mo. Terminal there were three distinct classes of service: (1) Those positions in the local Freight Office; (2) those positions working in the yards; and (3) those positions assigned at the freight dock, and in the absence of an extra available qualified employe from the freight house to work Utility Clerk Position No. 11, the principle of seniority should have prevailed in using an employe from the yard classification to fill the vacancy.

Rule 48 of the applicable Agreement, dealing specifically with overtime, provides---

#### **"AUTHORIZING OVERTIME**

**Rule 48** No overtime hours shall be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable. In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is primarily necessary shall be given preference."

Rule 48, by its specific terms, provides no basis for the claim herein, as neither the Claimant nor the person used on the vacancy, was regularly assigned to the class of service for which overtime was necessary. The Petitioner has cited no other rule dealing with the assignment of overtime, and in the absence of contractual limitation upon Carrier's right to fill the vacancy in Utility Clerk Position No. 11 in the manner in which it did, we must hold that there was no violation.

**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.