



**Award Number 17909**

**Docket Number CL-18166**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Francis X. Quinn, Referee**

**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6548) that:

- 1) Carrier violated, and continues to violate, the Clerks' Agreement at Iron Mountain, Michigan when without benefit of bulletin, it employed, assigns and uses W. G. Hoskings with regularity on a short-hour day and short-week basis to perform work of handling mail and compensates him for such work at a Trucker's rate of pay.
- 2) Carrier further violated, and continues to violate, the Clerks' Agreement when it failed and fails to grant employee W. G. Hoskings seniority and place his name on the seniority roster for the seniority district in which employed.
- 3) Carrier shall now be required to bulletin the position of Mail Handler at Iron Mountain, Michigan and in the absence of a similar position in the seniority district, establish the rate of pay therefore by negotiation and agreement.
- 4) Carrier shall be required to compensate employee W. Hoskings the difference between the amount paid him and eight (8) hours at the straight time rate agreed upon for the position for each working day, Monday through Friday, on which he was worked and paid less than 8 hours, and the difference between time worked in excess of 8 hours on any day; such payment to be made retroactive 60 days from date of this claim and continue until the violations are corrected.
- 5) Carrier shall allow employee W. Hoskings five (5) days paid vacation or payment in lieu thereof for which he would have qualified in 1966 had he been properly assigned 8 hours per day, 5 days per week.

**EMPLOYES' STATEMENT OF FACTS:** Employee W. G. Hoskings entered the service of the Carrier on January 28, 1966 and was worked and paid four (4) hours at the Trucker's rate on that date. He performed no further service until May 1966. He returned to service on May 2, 1966 and was worked and paid on a short-hour basis on seven days during that

Position 37580 during the period this position was on bulletin account the retirement of the regularly assigned occupant thereof.

Effective October 1, 1967 the United States Government cancelled its contract with this Carrier to handle mail on its passenger trains, therefore, the need for this unassigned trucker service no longer existed. In fact, with trains 9 and 10 no longer carrying mail, the clerical force at Iron Mountain was reduced and/or rearranged, i.e., the Relief Position described in the first paragraph of the CARRIER'S STATEMENT OF FACTS was abolished effective October 2, 1967, and the assigned hours and rest days of Position 37580 were changed so that the services of the assigned occupant thereof could more adequately provide assistance in the performance of the clerical duties required by the agent in the routine performance of station duties.

Since September 30, 1967 Claimant Hoskings, due to his complete lack of clerical experience and for health reasons, has performed no other service for this Carrier.

Attached hereto as Carrier's Exhibit "A" is a copy of a letter dated January 31, 1968 from Mr. S. W. Amour, Vice President-Labor Relations to Mr. H. C. Hopper, General Chairman.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** This claim was submitted by the Organization on September 15, 1967, retroactive for a period of 60 days, that is, to July 17, 1967. Sometime prior to July 17, 1967 the Carrier employed Claimant for the specific purpose of assisting a regularly assigned clerical employee in loading, unloading, positioning and/or moving platform trucks about the station platform, all of which was incidental to unloading of mail, newspapers, etc., from Train No. 9. Carrier's statement of the restrictive nature of Claimant's duties has not been categorically denied by Petitioner in view of which it does not appear to have been improper or in violation of the Agreement for Carrier to have classified and compensated Claimant as a Trucker. This conclusion, of necessity, is confined to this particular dispute.

As to item 1 of the Statement of Claim, we find that Claimant's services were not required on a daily or continuing basis and Carrier was not required to bulletin the position. As an extra or unassigned employee Claimant was only utilized on days when the volume of mail was such as to require his services. Therefore, he was only entitled to compensation on such days as service was actually performed. However, the record indicates that Carrier only paid Claimant for actual time worked with a minimum of four hours. Under Rule 26, the Basic Day Rule, Claimant was properly entitled to eight hours for days on which service was performed. He is, therefore, to be paid for the difference between what he was allowed and what he would have received had he been paid for eight hours each day service was performed in accord with Rule 26. Petitioner has submitted a record of the dates and hours worked by Claimant, which has not been refuted by Carrier and must be regarded as being correct. In addition to being entitled to eight hours' compensation instead of four hours on days on which service was performed, Claimant is also entitled to the time and one-half rate for all time worked in excess of eight hours on any date in accord with the provisions of Rule 32. For any such instances, Claimant is to be made whole by allowing him the difference between what he had been paid and what he would have received for such hours at the time and one-half rate. Petitioner's contention that Claimant's rest days could only be Saturday and Sunday must necessarily be rejected. The record shows without contradiction that extra and un-

assigned employes on this Carrier have a workweek starting with Monday. However, Claimant is properly entitled to time and one-half rate on any day or days that he performed service in excess of five days in any one workweek. Here again he is to be compensated for the difference between what he had been paid and what he would have received had he been paid at the time and one-half rate on such days.

Item 2 of the Statement of Claim alleges the Agreement was violated when Carrier failed to grant Claimant seniority and place his name on the seniority roster for the district in which employed. We agree.

Item 3 of the Claim requests this Board to require the Carrier to bulletin a position of Mail Handler at Iron Mountain, Michigan, with a rate of pay to be established by negotiation and agreement. We have many times held that it is beyond the authority of this Board to order the Carrier to establish a position and that the method whereby an Agreement violation is corrected is for the Carrier to decide. These holdings are affirmed and this portion of the claim must be dismissed.

Item 4 of the Claim is disposed of in accord with the discussion under Item 1 of the Claim, except that if Claimant performed service on a Holiday for which he has been compensated at straight time rate he is to be allowed the difference between the straight time rate and the time and one-half rate for any service performed on a Holiday.

As to Item 5 the record of days worked as submitted by Petitioner shows that Claimant rendered compensated service on 110 days in the year 1966. Since we have found that it was proper for Carrier to use Claimant only when his services were required it is apparent that he did not perform sufficient service in 1966 to qualify for a vacation in 1967, and this portion of the Claim must be denied.

**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 violated to the extent indicated in the Opinion.

#### A W A R D

Items 1 and 4 of the Claim are sustained to the extent indicated in the Opinion and Findings; Item 2 is sustained; Item 3 is dismissed; Item 5 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1970.

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