

Award No. 18916
Docket No. CL-19324

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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 6936) that:

1. The Carrier violated the rules of the Agreement extant between the parties when it used an employe not covered by the Clerks' Agreement to perform vacation relief during month of December, 1969, at Elko, Nevada.

2. The following employes who were adversely affected shall be allowed payment as claimed.

F. Oldham	8 hrs. overtime for Dec. 1, 1969
J. G. Ford	8 hrs. overtime for Dec. 6, 1969 (8 A. M. to 4 P. M.)
M. T. Clark	8 hrs. overtime for Dec. 6, 1969 (4 P. M. to 12 Mid.)
M. T. Clark	8 hrs. overtime for Dec. 7, 1969
P. E. Anderson	8 hrs. overtime for Dec. 11, 1969
P. E. Anderson	8 hrs. overtime for Dec. 12, 1969
M. T. Clark	8 hrs. overtime for Dec. 13, 1969
P. E. Anderson	8 hrs. overtime for Dec. 16, 1969
K. Baumgardner	8 hrs. overtime for Dec. 17, 1969
F. Oldham	8 hrs. overtime for Dec. 19, 1969
F. Oldham	8 hrs. overtime for Dec. 20, 1969
F. Oldham	8 hrs. overtime for Dec. 23, 1969
J. L. Reed	8 hrs. overtime for Dec. 24, 1969
F. Oldham	8 hrs. overtime for Dec. 26, 1969
F. Oldham	8 hrs. overtime for Dec. 27, 1969
F. Oldham	8 hrs. overtime for Dec. 28, 1969

"RULE 40(d).

Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancy and/or vacancies occasioned by the filling of positions pending assignments by bulletin. When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee on that roster who has protected his seniority as provided in this rule, the senior qualified furloughed employee will be called to fill the position. Furloughed employees failing to return to service within 7 days after being notified, by mail or telegram sent to last address given, or give satisfactory reason for not doing so, will be considered out of the service. Employees hired for the performance of extra work shall be considered as furloughed employees under this rule."

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue to be determined herein is whether or not Robert C. Taylor was a telegrapher or a clerk at the time he performed the work in question. If this Board finds that Mr. Taylor was a telegrapher at the time he performed said clerk's duties as vacation relief at Elko, Nevada on the dates in question, then we must sustain the claim. If we find that Mr. Taylor was a clerk at the time he performed the disputed work, then we must deny the claim.

The Organization's position is that Robert C. Taylor, who performed the work in dispute, was employed as a telegrapher through the month of December, 1969 until his resignation by letter of January 6, 1970; that Carrier's assertion that Mr. Taylor resigned as a telegrapher and entered service as a clerk on November 22, 1969, is not supported by the facts, because:

- (1) Mr. Taylor's letter of resignation clearly indicated that he himself was under the belief that he was a telegrapher. (Employees' Exhibit L)
- (2) Carrier's Eastern Division Seniority Roster, page 3, January 1, 1970, had R. C. Taylor's name inscribed on No. 93 as date employed 10/19/69. (Employees' Exhibit M)
- (3) Letter written by General Chairman, R. M. McCormick, of the Transportation Communication Employees, advising him of his rights on the Telegraphers' Extra Board. (Employees' Exhibit K)
- (4) Carrier's "Change of Personnel" statement showing Mr. Taylor as a telegrapher until date left service on January 6, 1970. (Employees' Exhibit I)

The Organization also argues that the fact that the Telegraphers' Agreement provides for the forfeiture of seniority when work not covered by their agreement is accepted during a certain ninety day period cannot be utilized to adversely affect its members who are protected by a scope rule of their own; that the proper filling of vacancies under the Clerks' Agreement, when furloughed employees are not available, is under Rule 29, and Carrier had the choice of hiring a vacation relief employee for use as a furloughed clerk or

filling the vacancy by seniority order and since Carrier did neither, it is in violation of the Agreement.

Carrier's position is that Mr. Taylor's seniority as a telegrapher was terminated effective November 22, 1969 and he established seniority as a clerk under the provisions of Rule 27 of the Agreement; that when it became apparent that substantial vacation work would be available during the month of December, 1969, Mr. Taylor was hired as a clerk and on November 22, 1969 commenced breaking in on the various positions in the Elko office; that Mr. Taylor possessed less than 90 days' service as a telegrapher on the date he was employed by Carrier as a clerk and, therefore, he forfeited his telegrapher's seniority rights under the provisions of Rule 22(c) of the Telegraphers' Agreement; that subsequent to November 22, 1969, the only seniority held by Mr. Taylor was the seniority he established as a clerk under the provisions of Clerks' Rule 27, providing in part that:

"Seniority begins at the time the employee's pay starts in the seniority district in which employed."

that Rules 31(f) and 40(d) require that furloughed clerks, if available, be used before regular assigned employees such as Claimants, and the further fact that Mr. Taylor, a qualified furloughed clerk, was employed for the performance of extra work under the provisions of Rule 40(d).

A close examination of the record clearly disclosed that Robert C. Taylor, who performed the disputed work in question, was a telegrapher at the time he performed the duties of a clerk on the dates in question at Elko, Nevada, and, therefore, Carrier violated the Agreement by permitting Telegrapher Taylor to perform clerical work on said dates. This conclusion is supported by Carrier's Form 118, regarding "Change in Personnel", filled out by Carrier's Superintendent J. C. Luser, dated 1/8/70, showing Robert C. Taylor, occupation Telegrapher at Sacramento, California, with date employed as 10/19/69 and date left service as 1/6/70, and the reason for leaving as "Resigned". Further, the Organization submitted a copy of a letter from Robert C. Taylor, dated January 6, 1970, in which he states, in part: "Please accept this as my resignation as a telegrapher (Extra Board) as of this date." Further, Carrier's Seniority Roster, Eastern Division, Telegraphers, as of January 1, 1970, listed R. C. Taylor, No. 93, employed 10/19/69. Carrier attempts to excuse such listings of Mr. Taylor on the Changes in Personnel Form 118 and on the Telegraphers' Seniority List of 1/1/70 as mistakes. However, we find that the record clearly discloses that Mr. Taylor didn't resign as a telegrapher prior to performing the disputed clerical duties. We do not agree with Carrier's contention that Mr. Taylor terminated his status as a telegrapher, forfeited all seniority as a telegrapher, when he accepted service under the Clerks' Agreement on November 22, 1969, and at the same time and by the same act in filling a compensated position under the Clerks' Agreement, he established a seniority date as a clerk. Rule 22(c) of the Telegraphers' Agreement provides that if a telegrapher, during his initial 90 day employment with a Carrier, accepts service as dispatcher or in any other position not covered by this Agreement he shall forfeit seniority as a telegrapher and his name be stricken from the telegrapher's seniority list. This provision does not say that if a telegrapher does accept service in any other position not covered by the agreement, his service as a telegrapher with Carrier is terminated.

Therefore, we find that Carrier violated the Agreement when it permitted in this instance, a telegrapher, R. C. Taylor, to perform the duties of a clerk on the dates in question at Elko, Nevada, and we must thus sustain the claim.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.