

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19233
Docket Number CL-17366

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Southern Pacific Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6348)
that:

(a) The Southern Pacific Company violated the Clerks' Agreement when it failed to fill Position No. 344 under the Short Vacancy Rule thereof, from July 9 through July 27, 1962; and instead, arranged to have the work of the position performed by an on-duty employee covered by the Agreement and by other employees not covered thereby.

(b) The Southern Pacific Company further violated the Clerks' Agreement when it nominally abolished Position No. 344 effective close of work on July 31, 1962, and permanently assigned duties of that position to persons outside the scope of the Clerks' Agreement.

(c) The Southern Pacific Company shall now be required to allow H. J. Killeen eight (8) hours pay at the pro rata rate of Position No. 344 for each workday July 9 through July 27, 1962, and in addition compensate him for the number of overtime hours worked by the Foreman of B & B Gang No. 6 in performing clerical work during such period; and,

(d) The Southern Pacific Company shall now be required to allow Mrs. J. E. Graham and/or her successor or successors in interest, namely, any other employee or employees who may stand in the same status as claimant and who may be adversely affected, one day's pay at the pro rata rate of Position No. 344 for date of July 30, 1962, and for each subsequent date until violation has been corrected and the work involved has been returned to employees coming under the scope of the Clerks' Agreement.

OPINION OF BOARD: The herein claim concerns itself with a two-facet dispute arising at Portland, Oregon when (1) during the period July 9 - July 27, 1962, the regular occupant of Position No. 344 was absent on vacation and his position was not filled by a vacation relief employee and (2) commencing July 30, 1962 position No. 344 was abolished (following the death of its occupant) and the work remaining thereon was distributed to other Carrier employees. Therefore, we are confronted with one Claimant, H. J. Killeen, for the period July 9 through July 27, 1962, the claim involving the period of

vacation; and another Claimant, J. E. Graham, for the continuing claim commencing July 30, 1962 covering the events subsequent to the abolishment of Position No. 344.

It is uncontested in the record that Position No. 344 was not filled by a vacation relief employe while the incumbent was on vacation. The duties of Position No. 344 prior to its abolishment were seventeen (17) in number. They consisted of:

1. Checked men in when they reported for work in the morning.
2. Checked men in when they reported back to Brooklyn, after completing of day's work.
3. Maintained record of time worked in time book and on Form 201.
4. Handled claims for unemployment benefits.
5. Made up requisitions.
6. Ordered material by telephone.
7. Kept time roll for personnel of Automotive Work Equipment Shop at Brooklyn.
8. Made up Form 203, "Distribution of Labor for Bridge and Building Department," for personnel of Automotive and Work shop at Brooklyn.
9. Made up Form 203, "Distribution of Labor for Bridge and Building Department," for B&B Gang 6.
10. Made up report on weekly safety meeting.
11. Filed all correspondence, reports, records, etc.
12. Maintained letters from Division Engineer restricting certain men of gang from various activities account physical disability.
13. Handled all correspondence.
14. Made up Form 2720, "B&B Foreman's Period Labor Report."

15. Made up Form 505, "Work Order & Recollectible Expenditures."
16. Made GMO progress report.
17. Checked in material when received against shipping invoice and signed for same.

During the vacation period some of the duties were left undone; necessary work was distributed to other employees. The following distribution of "necessary" duties occurred: Item No. 4 above was assigned to Claimant H. J. Killeen. The time required of the Item 4 assignment approximated two hours per day. Clerical work in connection with the Automotive and Work Equipment Shop was given to the Lead Motor Mechanic, an employee outside the scope of the Clerks' Agreement. Some remaining duties were turned over to the Foreman of the B&B Gang No. 6.

Article 10(b) of the National Vacation Agreement provides:

"Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five percent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

From the record we hold that Carrier's assignment of the work of Position No. 344 during the vacation period, July 9 - 27, 1962, exceeded the parameters established by Article 10(b) as Interpreted.

It is noted that Part (c) of the claim seeks eight (8) hours' pay for each work day July 9 through July 27, 1962 for Claimant H. J. Killeen, and also compensation equal to the number of overtime hours worked by the Foreman of B&B Gang No. 6 in performing clerical work during this period. We think that the eight-hour pay portion of Part (c) of the claim is excessive. That portion of Part (c) of the claim seeking payment equivalent to the number of overtime hours worked by the Foreman of B&B Gang No. 6, we are inclined to allow. The record indicates that these overtime hours averaged about one and one-half hours per day. We will, therefore, sustain Part (c) of the claim for one and one-half hours at pro rata rates for each work day of Position No. 344 from July 9 through July 27, 1962.

We next turn our attention to the situation as it existed commencing July 30, 1962, or the period subsequent to the abolishment of Position No. 344. To prove a violation of the Agreement following the abolishment of Position No. 344, the Petitioner must necessarily rest its case on the Scope Rule of the existing Agreement. In 1953 the instant Scope Rule was before this Board in Award 6269; therein we stated:

"The Scope Rule in the Agreement before us is general in character, and in no way defines the work to be performed, nor does it allow the Organization the exclusive right to all clerical work to be performed."

The matter again came before this Board in Award 15752 where it was written:

"* * * In a multitude of Awards, which are too numerous to require citation, this Division has held that a past practice must be system-wide in order for it to be controlling in cases where, as in this case, the Agreement is system-wide."

Petitioner submits no evidence to overcome either of these Awards. Accordingly, we will deny Items (b) and (d) of the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

Carrier violated the Agreement to the extent indicated in the Opinion of Board.

A W A R D

Claim sustained to the extent indicated in the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.