

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19668
Docket Number CL-19541

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station **Employees**
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7011)
chat:

1. Carrier violated the Clerks' Agreement when it required Clerk Mrs. T. L. Mohler to work position of Rate Clerk **(138)**, April 24, 1970, Freeport, Texas, and then refused to properly compensate her pursuant to Rule 37 (a-1) of the Clerks' Rules Agreement.

2.. Carrier shall now be required to compensate Mrs. T. L. Mohler for an additional five (5) hours at the rate of time and one-half for work performed April 24, 1970.

OPINION OF BOARD: The facts giving rise to the instant claim are not in dispute. On Friday, April 24, 1970, Mrs. **L. LeCompte** was unable to work her regular assignment account of illness so she laid off sick. She is regularly assigned to position of Rate Clerk, No. 138, hours of assignment **1:00** P.M. to 9:00 P.M. Claimant is regularly assigned to position of Rate Clerk, No. 119, hours of assignment 9:00 A.M. to 6:00 P.M. Upon completing her regular assignment claimant performed the work of position No. 138, working such position until **10:15** P.M., for which she **was** paid 4 hours, 15 minutes at overtime rate of pay.

The Organization maintains that claimant was required to fill Rate Clerk position No. 138 in the absence of the incumbent thereof, and should be paid according to Rule **37(a-1)** which entitles her to a full **8** hours pay at overtime rate though she worked the assignment less than **8** hours. While Carrier contends that position No. 138 was not filled, rather it was blanked, and claimant merely performed overtime service continuous with her assignment for which she was properly paid on the minute basis at the overtime rate in compliance with Rule 37 (c-1).

It is undisputed that Carrier has the right to blank a position in the absence of the regularly assigned incumbent where there is no contractual restriction against such blanking. However, a position is blanked when no one works it and here claimant worked position No. 138 and thus we conclude that it was, in fact, filled, not blanked as Carrier contends. Carrier concedes this in their letter of June 16, 1970 when Supt. **Blassingame** wrote: "...Clerk Mohler . . . was used on an overtime basis from 6 PM until **10:15** P.M. on Rate Clerk position which was vacant because of illness of Mrs. L. **LeCompte** . . ." and in their letter

of July 21, 1971 when Mr. O. B. Sayers wrote: "She was held on overtime to perform work which normally would have been performed by the occupant of rate clerk Job No. 138...." He went on to state that the position was not filled however.

Since Carrier elected to fill the position by utilizing claimant therein, it was bound to pay her 8 hours pay for the assignment in compliance **with** Rule 37 (a-1).

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 **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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.