Award No. 2679
Docket No. CL-2650

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The carrier has violated and continues to violate the rules of the Clerks' Agreement when it uses incumbents of exempted positions, employes from other seniority districts, university students, and members of the armed forces, to perform service on Sundays and holidays at San Francisco Freight Station, instead of using available employes on the seniority roster of that station to perform the service.

(b) Employes:

G. F. Elliott	F. W. Klotz	R. A. Clapes
A. T. McQuaid	R. A. Pickens	M. A. Rogers
A. Friere	R. F. Palmer	S. Gevertz
E. R. Del Monte	V. Liotta	W. Burkhart
H. J. Diercks	R. Sahut	W. Hanley
O. McGough	S. A. Strutner	H. Shaw
R. E. Buskey	T. C. Morse	T. Harron
J. Cloherty	R. F. Leal	J. Phelps
W. Egan		

be compensated on call basis at the rate of their regular positions, under provisions of Rule 21 of our current agreement, for the number of hours on Sunday, October 18, 1942, and on all subsequent Sundays and holidays they were not used in lieu of individuals without seniority rights on San Francisco Freight Station seniority roster.

(c) Employes:

M. J. Cunningham	T. G. Calvas
P. J. Sullivan	C. F. Frederickson
B. L. Davis	W. H. Quandt
F. Kemler	J. P. Romano
E. J. Kendrick	

be compensated on call basis at the rate of their regular positions, under provisions of Rule 21 of our current agreement, for the number of hours for all Sundays and holidays subsequent to November 13, 1942, they were not used in lieu of individuals without seniority rights on San Francisco Freight Station seniority roster.

filled with an extra employe or with an employe who regularly carries the same or a lower rate of compensation than that of the position to be temporarily filled, in which latter event, however, he shall be compensated on basis of rate of pay of the position temporarily filled.

(Sgd.) P. SLATER
Member

(Sgd.) A. J. HANCOCK
Chairman

(Sgd.) F. W. TENNEY
Member

(Sgd.) G. DE YOUNG
Vice-Chairman

San Francisco, California,
November 26, 1930."

The office employes and carload checkers at the freight station that were used on Sundays and holidays to perform work on the station platform on a voluntary basis were not taken from their regular assignments and assigned to such positions on the station platform; they were merely used to work on the station platform on their rest day in accordance with their voluntary request to be so used.

The foregoing conclusively establishes that Rule 7 was in no way violated when the carrier compensated office employes and carload checkers for services performed on the station platform on Sundays and holidays on the basis of time and one-half at the rate of the station platform positions worked.

The petitioner during its handling of the claim in this docket with representatives of the carrier also referred to Rules 1, 30 and 31 of the current agreement; however, a mere reading of said rules will immediately disclose that they are in no way applicable and in no way support the claim in this docket.

The carrier submits—

1. That its entire action in securing employes to supplement the station platform forces at the San Francisco Freight Station was in every respect proper and in no way violated the current agreement.

2. That in permitting office employes and carload checkers to work on the station platform on a voluntary basis was entirely proper and in no respect violated the current agreement.

3. That in compensating such office employes and carload checkers on Sundays and holidays on the basis of time and one-half at the rate of the platform position worked was proper and in no way violated the current agreement.

4. That there is no basis for a claim on behalf of any office employe or carload checker who did not volunteer to work on the station platform on Sundays and holidays and therefore did not work on such days.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket, in its entirety, is without basis or merit and therefore respectfully submits that it should be denied.

OPINION OF BOARD: In September 1942, there was a shortage of help for Sunday and holiday work among the freight handling forces on the warehouse platforms at the San Francisco Freight Station. There not being enough men available who were entitled to the work under the current agreement, the carrier requested the clerical forces and carload checkers at that station to do the work on an overtime basis. When these sources did not produce enough men, the carrier used men from other seniority districts and other persons without any seniority rights at all. Some of the claimants are clerks in the office

force who responded to carrier's request and worked two Sundays, September 20th and 27th. They were paid on the overtime basis of one and one-half times the rate of their regularly assigned clerical positions. The carload checkers who responded to the carrier's request were paid one and one-half times the rate of their regularly assigned positions until November 13th. The office clerks and carload checkers terminated their freight handling work when the carrier reduced their pay to one and one-half times the rate paid to freight handlers. The carrier then replaced them with men from other seniority districts and men who had never previously worked for the company. It is the contention of the claimant office clerks and carload checkers that if the carrier had continued to pay the overtime rate of their regularly assigned positions, they would have performed the work and that their failure to so do was the result of the carrier's violation of the current agreement. Claimants ask that they be compensated for the Sundays and holidays worked by men from other seniority districts and those having no seniority rights with the company at all, at the overtime rate of their regularly assigned positions.

It must be borne in mind that freight handling work was no part of the work of the office clerks or carload checkers. It was not work that they were in any wise entitled to do because of their regularly assigned positions. It did not grow out of it, nor was it incidental to it. The carrier could not properly order them to do the work. In other words, the office clerks and carload checkers had no preferential right to freight handling work.

The record shows clearly that claimants did not do the work for which they are claiming penalty pay. These claimants were not deprived of work to which they were entitled. The carrier afforded them an opportunity to do the work, which they declined. Under such circumstances, to have a valid claim, the employe must do the work. He may then rely upon the enforcement of the agreement to obtain his proper rate of pay. No basis exists for an affirmative award.

The employes contend that such a conclusion is inconsistent with the provisions of Rule 7 of the current agreement which provides: "Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced." The contentions of the employes seems to have been settled in Decision No. 6, Clerks' Board of Adjustment, wherein it was determined that Rule 7 applies only in connection with the guaranteed portions of assignment as provided for in the last paragraph of Rule 3. We have heretofore demonstrated that the work here involved was not guaranteed work under the current agreement.

The employes' organization attempts to meet the situation with the assertion that a new agreement has been negotiated since the promulgation of Decision No. 6 and although the identical language of Rule 7 was readopted, the effect of Decision No. 6 has been nullified for the reason that the agreements, understandings and interpretations to Rule 7 to be retained were included in a formal stipulation to that effect and that the rule announced in Decision No. 6 was not included as one for retention.

We think the rule is that where a portion of a written contract is carried forward verbatim into a new contract, all interpretations of the old agreement are carried forward into the new unless there be a declared intent to the contrary. The memorandum of agreement containing the stipulation herein before referred to refers to specific agreements and understandings which the parties desired to remain in force but it does not purport to be exclusive. There is nothing in it to indicate that the interpretations made by the Clerks' Board of Adjustment, this Board, or any other board having jurisdiction, were intended by the parties to be completely eliminated. In the absence of a clear intent, affirmatively shown, we are obliged to give Rule 7 the same interpretation in the new agreement that it had in the old.

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 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 provisions of Rule 7, current agreement, do not apply to work to which an employe is not entitled as a matter of right under the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1944.