

Award No. 2721

Docket No. CL-2737

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE TEXAS MEXICAN RAILWAY COMPANY

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

(a) The Carrier violated the Clerks' Agreement when it deducted four (4) hours' pay from the March earnings of A. B. Muller because of not working Saturday afternoon, February 26, 1944. Also,

(b) Claim that the Carrier now be required to reimburse Mr. Muller the amount deducted.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. B. Muller is employed as a Clerk in the Auditor's Office at Laredo, Texas.

One of his duties is the compiling of monthly statement of revenue and expenses, usually referred to on this property as Form T. M. 296.

The information on Page 1 of the above report is furnished to the Interline Department for use in preparing a monthly report to the Interstate Commerce Commission. The information on Pages 2, 3 and 4 of Form T. M. 296 are for information of the Carrier, and are not used in compiling the report to the Interstate Commerce Commission.

Mr. Muller completed Page 1 of Form T. M. 296 Saturday morning, February 26, 1944, and passed the information to the Interline Department before noon of that date.

Pages 2, 3 and 4 of Form T. M. 296 can be deferred for an indefinite period of time, and there is no requirement that those pages be completed within any given period of time. In fact, the entire report, as well as the Interstate Commerce Commission report, had already been deferred for an entire month. The report here involved being for the month of December 1943, which is normally due out on the 26th of the following month.

Mr. Muller has standing instructions from Carrier Officers to work such overtime as he may feel is proper in the performance of his work and, accordingly, Mr. Muller worked five (5) hours on Sunday, February 27, 1944.

The work Mr. Muller performed on Sunday, February 27, 1944, was the completing of pages 2, 3, and 4 of Form T. M. 296. The work was performed on Sunday, not because it could not be reasonably deferred, but solely because of the volume of work on Mr. Muller's position and in accordance with standing instructions.

Muller desires to penalize the Carrier by requiring it to pay more than twice as much as it would have paid had Mr. Muller worked, as he should have, on Saturday afternoon.

As the claim is entirely without merit, the Carrier submits that it should be in all things denied.

OPINION OF BOARD: A. B. Muller did not work Saturday afternoon, February 26, 1944, and for that reason the Carrier deducted four hours' pay from his pay. The question before us is: Could the work he was doing be reasonably deferred under Rule 57 of the current Agreement?

Muller and a Mr. Nye had been working on a report of Form T. M. 296 of the Interline Department and Page One of that form was a monthly report passed due to the I. C. C. which was completed by Noon of that Saturday. The following day, Sunday, Muller worked from 12:30 to 5:30 P. M., and Nye worked from 1:30 to 9:00 P. M. Nye did not work the Saturday afternoon in question, but Nye was paid for that Saturday afternoon.

Muller had been instructed by his superiors to work such overtime as he felt proper in the performance of his work. He was not instructed to work the Saturday afternoon in question. It is to be gathered from the record that whether he worked overtime or on Saturday afternoon was left to his own judgment. He exercised that judgment by deciding it was not necessary to work that Saturday afternoon. His judgment may have been bad, but he had the right to determine if the work could reasonably be deferred. He determined that the work could have been reasonably deferred. Therefore, the claim must be sustained.

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

That the Carrier violated the Agreement as contended by Petitioner.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.