

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When on November 2, 1942 it failed to promptly bulletin as vacancy the position of Icing Inspector and Interchange Clerk at Marion, Ohio, and to release employe James Price from such position so that he might assume relief position No. 5 awarded to him per Superintendent's bulletin of that date, and

(2) That carrier shall now reimburse employe Price at rate of time and one-half for all hours worked outside of his regular assigned hours each day November 2nd to November 23rd, both dates inclusive, 1942, and in addition

(3) That carrier shall now compensate employe Price at pro rata rate for regular hours of his assignment during the period November 2nd to November 23rd (1942), inclusive.

EMPLOYEES' STATEMENT OF FACTS: On October 16, 1942 relief position No. 5, Marion, Ohio was bulletined for bid per Superintendent's clerical advertisement No. 273, copy of which is shown as Employees' Exhibit "A."

On November 2, 1942 the Division Superintendent, per clerical assignment bulletin No. 273, shown as Employees' Exhibit "B," assigned Clerk Price to relief position No. 5 advertised per Superintendent's bulletin, Employees' Exhibit "A."

For its own convenience the carrier worked Mr. Price on his new position November 3, 10 and 17, 1942 but required that he work his former position as Icing Inspector and Interchange Clerk, hours 6:00 P. M. to 3:00 A. M. and some overtime in connection with such position on November 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 1942 and the employe was thus required to work on his assigned rest days November 6, 13, and 20, 1942 for which service he was compensated at pro rata rate.

On November 10, 1942 carrier bulletined the former position of Mr. Price as vacancy, per Superintendent's clerical advertisement Bulletin No. 279, copy of which is shown as Employees' Exhibit "C," and on November 20, 1942 the position was awarded to employe J. B. Williamson per assignment bulletin No. 279, copy of which is shown as Employees' Exhibit "D." Employe Williamson assumed his new duties effective November 24, 1942.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties bearing effective date of September 1, 1936 from which the following rules are quoted:

4. There is no rule that requires compensation at rate of time and one-half for work on position worked when transferred to another position under Rule 36, and there is no requirement that hours of position worked must be the same as hours of regular assignment.

OPINION OF BOARD: Based upon all the facts and circumstances of this particular case, without establishing a precedent, the Board holds that the claimant employe shall be paid pro rata at the daily rate of \$6.10 for Sundays and \$5.90 per day for each of the remainder of the days of the week during the period November 2 through November 23, 1942.

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 parties waived oral hearing thereon;

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 claim will be sustained to extent stated in Opinion.

AWARD

Claim sustained to extent stated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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