

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Henry J. Tilford, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that F. J. Rauwolf, train desk clerk at Stockton Yard, be paid at the rate of time and one-half for all service performed on November 2, 1942.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 1, 1942 F. J. Rauwolf was regularly assigned to position of Train Desk Clerk at Stockton Yard. His hours were 8:00 A. M. to 4:00 P. M.

Rauwolf had been temporarily assigned by Carrier to work the position of Chief Clerk, hours 9:00 A. M. to 5:00 P. M., on November 1, 1942 account of absence of regularly assigned employee. On November 2nd Rauwolf returned to his regular assignment with hours 8:00 A. M. to 4:00 P. M., thus starting a second day within a 24-hour period after starting a previous tour of duty.

Rauwolf was paid at straight time rate for his tour of duty on November 2, 1942.

POSITION OF EMPLOYEES: The following rule is cited from the agreement bearing effective date of October 1, 1930:

"Rule 20. Except as provided otherwise in these rules, time in excess of eight hours, exclusive of the meal period, on any day shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights from one assignment to another; or when extra men are used; all time worked in excess of eight hours' continuous service in a 24-hour period shall be paid for as overtime, on the minute basis, at one and one-half times the hourly rate.

"Employees shall not be required to suspend work during regular hours to absorb overtime.

"No overtime hours shall be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable."

Further study of Award No. 687 convinces Carrier that the circumstances involved in and the principle decided by the award are not comparable to the instant dispute. In the Rock Island decision, the referee interpreted the meaning of the word 'day' in Rule 49 (our Rule 20, first paragraph). Second paragraph of Rule 20 provides for the payment of pro rata rates of pay:

"* * * or where exercising seniority rights from one assignment to another; or when extra men are used."

At the time involved, Rauwolf was regularly assigned to position of Train Desk Clerk, 8:00 to 4:00 P. M. December 1, 1942, regular chief clerk laid off and the temporary vacancy belonged to the senior qualified available extra man but there was no such qualified extra man. It therefore became necessary to use the senior qualified available regular man, who was Rauwolf. You have repeatedly contended that such vacancies in the absence of qualified extra men must be filled by regular men desiring the work in seniority order. This is strictly a seniority proposition and does not warrant the penalty payment demanded. It is regretted that payment was made in Case No. 1688 because it, too, was a seniority proposition and should not have been allowed.

The schedule does not justify the payment of this claim and in opinion of Carrier, Award No. 687 does not sustain it.

Claim is declined.

Yours truly,

(Sgd) E. W. Mason—HRF,
Vice President and General Manager."

Between 9:00 A. M. November 1 and 9:00 A. M. November 2, 1942, Rauwolf worked a total of 9 hours—8 hours as Chief Yard Clerk and one on his own assignment, and that hour was occasioned by his seniority.

Carrier urges rejection of claim for the following reasons:

- (1) The ninth hour worked in the 24-hour period was a seniority move to enable Rauwolf to return to his regular assignment.
- (2) Except for calls which are not here involved, the schedule requires payment of time and one-half **only** for time actually worked "on the actual minute basis." As to time worked, Rauwolf did not work 8 hours "in excess of eight hours" on any day.
- (3) Any decisions of Carrier allowing other claims were without prejudice to its views that the intent of the schedule rule does not contemplate a penalty of this character. Numerous Awards of tribunals have been superseded and overruled by subsequent Awards. The dispute here merits an Award based on the facts as applied to the schedule, i. e., the sustaining of the Carrier's decision in this case.

OPINION OF BOARD: On November 1, 1942, the Chief Yard Clerk, receiving \$7.45 per day, and whose assigned hours were 9:00 A. M. to 5:00 P. M., laid off. There was no qualified extra clerk available and F. J. Rauwolf, the senior qualified available assigned clerk desiring the work was used to relieve the Chief Yard Clerk. Rauwolf was paid \$7.45 for November 1st and again worked his regular train desk assignment, 8:00 A. M. to 4:00 P. M. November 2nd, for which he was paid \$6.70.

Rule 20 requiring payment of overtime on a minute basis contains three exceptions:

1. When changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off;

2. Or where exercising seniority rights from one assignment to another;
3. Or where extra men are used.

And it is apparent from precedents established by other awards that unless the Carrier can show that Rauwolf's claim for overtime is within one of these exceptions, he was entitled to be paid the overtime rate for one hour of the period worked by him on November 2, 1942, since he was required to start a second day within a 24-hour period after beginning his previous period of duty. (See Awards 687, 2030, 2346.)

Exception 1 is not involved because there is no question here of changing off under circumstances of working alternately days and nights for certain period. Exception 3 is not applicable since an extra man was not here used although the vacancy was properly one to have been filled in the first instance by an extra man had one been available. Accordingly, the whole of the Carrier's defense is predicated upon the contention that Rauwolf in filling the temporary assignment and thereafter returning to his regular position was "exercising seniority rights from one position to another," within the meaning of the second exception to Rule 20.

While it is true that the selection of Rauwolf to fill the temporary assignment may have constituted a recognition by the Carrier of his seniority rights, as Carrier contends it did, it seems to us that it would be a distortion of the meaning of the rule to hold that Rauwolf's acceptance of the temporary assignment, assuming that he had any voice in the matter, constituted an exercise by him of his seniority rights, a prerequisite to the applicability of the second section of Rule 20, since the exercise of seniority rights necessarily consists of the bidding in of an assignment or the displacement of a junior employee.

We are unable to find in the rules or the circumstances of this case any support for the Carrier's statement that the ninth hour worked in the 24-hour period was a seniority move to enable Rauwolf to return to his regular assignment.

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

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of April, 1945.