

Award No. 2999

Docket No. CL-3041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement, when on November 28, 1943, it failed to call Clerk Emery Smith, to perform overtime, and that employee Emery Smith be compensated for all monetary loss sustained account of failure of the Carrier to call him for the performance of this work.

JOINT STATEMENT OF FACTS: Commencing on November 28, 1943, it was necessary to work certain employees overtime in the Division Office at Great Falls, Montana, in connection with back pay for Engineers and Firemen, which was allowed them under a decision of the National Railroad Adjustment Board Award 7594.

This Award allowed Engineers back pay compensation account employees other than Engineers performing service on roadway machines. In order to properly apply this Award, it was necessary to determine the machines involved and the dates these machines worked, number of hours worked, etc.; also to obtain the names of the Engineers who were to receive payment under the Award, make time allowances, post allowances in time book and prepare payrolls.

The time books for Sections, Extra Gangs, District Gangs and B. & B. Gangs were returned to the Superintendent's Office at Great Falls from St. Paul, and the work of assembling the necessary information from these Track and B. & B. time books was performed by employees Swanstrom and Tewmeyer, two senior clerks in the Superintendent's Office. Section, Extra and District Gang payrolls are compiled from time books by the Road Clerk, which position was filled by H. C. Shaffroth, Henry Shaffroth, the regular assigned Road Clerk, did not work on his regular assigned work during the period in which this claim originated, but worked on the 16 hour books, which were brought from the Roundhouse Office, and other older Clerks prepared the payrolls, which was assigned to his desk.

The records which formerly had been compiled in the Roundhouse Office at Great Falls, known as Sixteen Hour Books, which were necessary to determine the names of Engineers who were to receive payment under this Award covering the territory of what was known as the Old Butte Division, were brought over to the Superintendent's Office and Road Clerk Shaffroth, who was junior to Emery Smith, was used on overtime basis to determine from information shown in these Hour Books, the names of Engineers to whom payment should be made. Clerk Shaffroth was used on this work until December 19, 1943, and the work was then completed by Clerks Swanstrom and Tewmeyer, senior employees to Emery Smith. The only work performed by Clerk Shaffroth was in connection with the records

gang time books, but instead on account of his previous experience as Roundhouse Clerk, was used to extract information from records which had formerly been compiled in the Roundhouse Office for the purpose of determining names of the engineers entitled to compensation under the award in question; such records having been brought over to the Superintendent's office in order that the work might be coordinated.

This is not, of course, in any way unusual procedure in such cases. After a group of employees is selected in accordance with schedule rules or established practices thereunder to handle a special assignment, the employees in that group are assigned to handle that portion of the work for which they are best qualified, regardless of whether or not it may be the work of their every day occupation. In this case, Clerks Swanstrom and Tewmey, who had had many years of experience both in timekeeping and on the job then occupied by Mr. Shaffroth, handled that particular part of the work, while Shaffroth, the best qualified of the group to handle the work from the Roundhouse, was used on that phase.

We further desire to direct the attention of the Board to the fact that even if it were to be held that Mr. Shaffroth should not have been used, purely on the basis of his seniority, then certainly claim cannot justifiably be made in behalf of Mr. Smith, since reference to the seniority roster will show that there were several employees older than Mr. Smith who were available and not used, the oldest of which in order of seniority, would have the only justifiable claim if it were held that seniority alone and not past practice, as exemplified by present rule, were to govern; first, there is Mr. L. C. Nelson, whose seniority date will be noted from reference to the roster is January 30, 1918, then Miss Elizabeth Bangs with a date of March 12, 1918 and Mr. Bruce Teague with a date of January 18, 1919, all of whom were older than Mr. Smith whose date is September 5, 1922, and all of whom were available, but make no claim whatsoever to the work due to their recognition of the fact that, under the existing understanding, they were in no way entitled to it. The duties of Mr. Smith's position were in no way connected with any of the positions to which this work would have been assigned had it been possible to complete such work within regular working hours, and, frankly, the Carrier is at a total loss at this time to understand why a claim should be advanced by Mr. Smith on any basis. He was not entitled to it in the event the assignment had been made on a purely seniority base, since there were several older employees than himself available, and he was likewise not entitled to it on the basis of established practice as specified and set forth in current rule.

The Carrier, therefore, feels that any claim in behalf of Mr. Smith must be held to be completely unjustified, and that your Board, from the evidence produced, must so hold.

OPINION OF BOARD: By this claim the Petitioner asserts that the Carrier violated the effective Agreement of October 1, 1925, from November 28 to December 19, 1943, when it failed to call Clerk Emery Smith, the senior employee, to perform certain overtime work in the Division Office at Great Falls, Montana. The claim is before us on a joint submission.

Required by First Division Award No. 7594 to compensate certain engineers and firemen for services in connection with the use of roadway machines, the Carrier was confronted with the necessity of determining from its records the machines involved, the dates these were used and the number of hours worked; also the names of the engineers and firemen who were entitled to receive payment under the Award, make time allowances, post allowances in the time book, and prepare payrolls. This necessitated a check of the Track and B. & B. time books and of the so-called 16-hour book made and kept by a Clerk at the Roundhouse.

In making the above calculations the Carrier utilized the services of Road Clerk Shaffroth on an overtime basis. Shaffroth was relieved of his regularly assigned duties and these were performed by others while he checked the 16-hour books, which were brought up from the Roundhouse, to ascertain the names of the engineers and firemen who were entitled to wage payments under the previous Award.

The Petitioner relies upon past practices of many years standing to the effect that when overtime work is required it shall be performed by the occupant of the position who would ordinarily perform the same during regular hours, and that when such work is not directly traceable to a certain position, seniority rights shall govern. Without denying that the above statements of the prevailing practices are substantially correct, the Carrier says that these have never been and should not now be applied so as to require the Carrier, in the protection of alleged seniority rights, to break down the general functions of a position into all of its component details; that the overtime service performed by Shaffroth was fundamentally timekeeping work, to which he was regularly assigned and with respect to which the Claimant had nothing to do; and that, conceding that the Claimant had superior seniority with respect to keeping the 16-hour books, Shaffroth's functions in connection with those records were merely incidental to his regular work. It is argued on behalf of the Carrier that employees holding particular clerical positions are not infrequently called upon to make incidental use of books and records compiled and kept by clerks on other positions, but that this does not require the Carrier to assign such work on the basis of the seniority of clerks whose function it is to make such records.

We think that the resolution of a question like the one here before us must turn upon the particular facts disclosed by the record in each instance, and that no hard and fast rule of general application can be stated. In other words, the degree to which the work approaches one or the other of the positions must be the determining factor.

This is a close case, but we have been persuaded to tip the balance in favor of the Claimant because of two circumstances affirmatively appearing in the record: (1) Shaffroth was relieved of his regular timekeeping duties and these were shifted to others; and (2) the reason assigned by the Carrier for this action was his previous experience as a Roundhouse Clerk and his familiarity with 16-hour records. (And as it may be observed, parenthetically, that Shaffroth had been promoted from a Roundhouse Clerk to a Road Clerk barely three months before the occurrence here complained of). It would appear to us to be inconsistent with the facts to hold that Shaffroth was performing the routine service of a timekeeper during the period in controversy. The more logical conclusion is that he was doing the work of a Roundhouse Clerk, temporarily engaged in assembling data for use of the other clerks in making up a special payroll.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 29th day of November, 1945.