

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

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

(a) Car Clerk, Donald Raison, Needles, California, be compensated for eight hours at his regular rate, \$7.16 per day, on December 16, 1941, account of being instructed to vacate his regular assignment of Car Clerk, 12:00 midnight to 8:00 a. m., to fill position of Crew Dispatcher, an excepted position, hours of assignment, 7:00 a. m. to 7:00 p. m.; and,

(b) Car Clerk, Donald Raison, be compensated in the amount of eleven (11) hours at punitive rate of his regular assignment \$7.16 per day, less amount of \$8.27 which he was paid, account of being required to work excepted position of Crew Dispatcher starting at 7:00 a. m. and completing assignment at 7:00 p. m. on December 16, 1941, these eleven (11) hours being time worked outside of his regular assigned hours, 12:00 midnight to 8:00 a. m.

EMPLOYEES' STATEMENT OF FACTS: Donald Raison was regularly assigned to position of Car Clerk at Needles station, hours 12:00 midnight to 8:00 a. m., rate of pay \$7.16 per day. On December 16, 1941, he was held off his regular position and instructed by the Agent to protect Crew Dispatcher position, hours 7:00 a. m. to 7:00 p. m. and for this twelve hours of service, he was compensated at pro-rata rate of Crew Dispatcher position \$8.27. Crew dispatcher positions at Needles are excepted positions. Raison reported for work on his regular Car Clerk assignment at 12:00 midnight December 17, 1941.

POSITION OF EMPLOYEES: There is in evidence an Agreement between the parties, bearing effective date December 1, 1929 in which the following rules appear:

Article VIII, Section 1—reading:

"Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, continuous with and outside of regular assigned hours, on any day, will be considered overtime and paid on the actual minute basis, at the rate of time and one-half."

"Claim * * * that:

"(a) Yard Clerk, Donald Raison, Needles, California, be compensated for eight hours at his regular rate, \$7.16 per day, on December 16, 1941, account of being instructed to vacate his regular assignment of yard clerk, 12:00 Midnight to 8:00 a. m. to fill position of Crew Dispatcher, an excepted position, hours of assignment, 7:00 a. m. to 7:00 p. m.; and

"(b) Yard Clerk, Donald Raison, be compensated in the amount of eleven (11) hours at punitive rate of his regular assignment \$7.16 per day, less an amount of \$8.27 which he was paid, account of being required to work excepted position of Crew Dispatcher starting at 7:00 a. m. and completing assignment at 7:00 p. m. on December 16, 1941, these eleven (11) hours being time worked outside of his regular assigned hours, 12:00 midnight to 8:00 a. m."

The above dispute was subsequently docketed by the Board as CL-3006. It will be observed that the Employees' Ex-Parte claim to the Adjustment Board in Docket CL-3006 was enlarged to require the payment to Mr. Raison of one day at the car clerk's rate of pay covering the period 12:00 midnight to 8:00 a. m. during seven hours of which he performed no service, and in addition time and one-half for service performed as crew dispatcher from 8:00 a. m. to 7:00 p. m. (11 hours) outside the spread of his regular hours of assignment as car clerk, whereas the claim which was handled with and declined by the Carrier requested payment at pro rata rate for the first eight hours of service and at time and one-half rate for the remainder of service within the twenty-four hour period measured from 7:00 a. m. December 16, 1941, at which time he commenced service as crew dispatcher, all at the car clerk's rate of pay.

The Carrier in a letter dated February 24, 1945 to Secretary Johnson of the Third Division protested the inclusion of claims for penalties other than those presented to and handled with the Carrier while the dispute was under consideration by the parties to the dispute. Thereafter the Grand President of the Organization, in his letter of March 28, 1945 addressed to Secretary Johnson of the Third Division, withdrew the claim in Docket CL-3006 from further consideration and action on the part of the Board. Award No. 2891 of the Third Division, dated April 6, 1945, in Docket No. CL-3006, contains notice of the dismissal of this case.

In the meantime, on March 1, 1945, and prior to the date of withdrawal of the amended claim referred to in the preceding paragraph, the Organization's Local Chairman presented to the Carrier's Superintendent at Needles, California, a claim identical in all respects to the amended claim which was later withdrawn from the consideration of the Board. This claim was thereafter progressed with the Carrier in the regular manner, declined by the Carrier as without merit or schedule support, and is now again before the Board for consideration.

POSITION OF CARRIER: Except for the hours of the claimant's assignment as car clerk and the hours of assignment of the crew dispatcher's position, the instant claim is identical in all respects to that advanced by the employees in behalf of Mr. Raison in a similar claim covering the period August 20-28, 1942, inclusive, which is now on file with and under consideration by the Third Division as Docket No. CL-3354. The Carrier's Position in the instant dispute is likewise identical to that which it has advanced in Docket No. CL-3354, and the Carrier accordingly requests that the Board refer to and consider the Carrier's Position in Docket CL-3354 as the Carrier's position in this dispute.

OPINION OF BOARD: On December 16, 1941, claimant held a regular position of Car Clerk, hours 12:00 midnight to 8:00 A. M., rate \$7.44 per day (corrected by Carrier from rate of \$7.16 as stated by petitioner). Claimant was held off his regular position on that date and required to work the position of Crew Dispatcher, an excepted position, hours 7:00 A. M. to 7:00

P. M., rate \$8.27 per day. Of the 12 hours he worked, 11 hours were outside his regular assigned hours.

The same parties, employe and rules of the applicable agreement are involved in this case as in the companion case, Docket No. CL-3354, Award 3444. The same result must be reached as we follow the same reasoning applied in that award.

Claim (a) must be denied because it would exact a double penalty.

Claim (b) must be sustained; but since we have denied claim (a) claim (b) must be enlarged to give claimant compensation for one hour at his regular rate of \$7.44 per day in addition to compensation for 11 hours at the punitive rate of his regular assignment of \$7.44 per day, as claimed under (b), less amount of \$8.27 which he was paid.

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 Carrier violated the Agreement.

AWARD

Claim (a) denied; claim (b) sustained in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1947.