

Award No. 3446
Docket No. CL-3357

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

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

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

(a) Yard Clerk R. C. McReynolds, Needles, California, be compensated for eight (8) hours at his regular rate, \$7.88 per day (98½¢ per hour), plus punitive rate of his regular assignment for time worked in excess of eight (8) hours or four (4) hours per day on January 28, 29, 30 and 31, 1945, less amount of \$10.38, which he was paid for each day's work, when required to vacate his regular assignment of Yard Clerk on the above dates and work excepted position No. 1134, Crew Clerk Supervisor, 7:00 A. M. to 7:00 P. M., and,

(b) Yard Clerk R. C. McReynolds, Needles, California, be compensated for eight (8) hours at his regular rate, \$7.88 per day (98½¢ per hour), plus punitive rate of his regular assignment for time worked in excess of eight (8) hours or four (4) hours on February 1, 1945, less amount of \$11.52 which he was paid for this day's work, when required to vacate his regular assignment of Yard Clerk and work excepted position No. 1134, Crew Clerk Supervisor, 7:00 A. M. to 7:00 P. M.

STATEMENT OF FACTS: R. C. McReynolds was regularly assigned to Position No. 430, Yard Clerk at Needles Station, hours 7:00 A. M. to 3:00 P. M., rate \$7.88 per day. On January 27, 1945 he was instructed by the Agent to forego service on his regular assignment of Yard Clerk and protect position No. 1134, Crew Clerk Supervisor, hours 7:00 A. M. to 7:00 P. M. on dates January 28 to February 1, 1945, inclusive. He followed these instructions and for this 12 hours service, he was compensated at pro rata rate of Crew Clerk Supervisor position, which rate figured \$10.38 for the days worked during January and \$11.52 for the day worked during February. Crew Clerk Supervisor positions at Needles are excepted positions, and are assigned twelve (12) hours per day.

POSITION OF EMPLOYES: There is evidence of an agreement between the parties, bearing effective date October 1, 1942 in which the following rules appear:

Article VII, Section 1—reading:

"Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, continuous with and

called excepted clerical positions such as the crew dispatcher position at Needles.

While the provisions of Article XI, Section 3(a) cited by the employees were not applicable to Mr. McReynolds while assigned to the crew dispatcher's position, the Carrier deems it appropriate to direct the Board's attention to the fact that Mr. McReynolds was paid the monthly rate of \$321.90 attaching to the crew dispatcher's position which was the equivalent of \$10.38 per day during January, 1945 and \$11.50 per day during February, 1945, as compared to the rate of \$7.88 per day attaching to the position of yard clerk from which he was temporarily promoted.

In conclusion, the Carrier asserts that the claim is completely without merit or schedule support and should be denied for the following reasons:

(1) The monthly rate of \$321.90 attaching to the excepted crew dispatcher's position and paid to Mr. McReynolds covered all services rendered by him while assigned to that position on the dates in question.

(2) Mr. McReynolds was assigned to the excepted crew dispatcher position pursuant the terms of Article III, Section 19-d of the Clerks' Agreement and assumed the hours of service, working conditions and rate of pay for that position.

(3) The payment allowed to Mr. McReynolds was in accordance with the long established and accepted application of the agreement rules and is not violative of any agreement rule.

(4) The agreement rules relied upon by the employees are not applicable to employees either temporarily or permanently assigned to excepted clerical positions such as the crew dispatcher position at Needles.

(5) The instant claim is an attempt by the employees to abrogate their agreement in Article I, Section 1, paragraphs (a), (b) and (c) of the Clerks' Agreement that the rules of that agreement upon which they now rely were not applicable to employees occupying excepted clerical positions. The parties' agreement in Article I, Section 1, paragraphs (a), (b) and (c) may only be changed by negotiation pursuant the provisions of Section 6 of the Railway Labor Act as amended.

OPINION OF BOARD: Claimant, a regularly assigned yard clerk, hours 7:00 A. M. to 3:00 P. M., was used to fill a temporary vacancy in the position of Crew Clerk Supervisor, hours 7:00 A. M. to 7:00 P. M. The latter position is an excepted one. For this Claimant claims compensation for the first 8 hours at his regular rate of \$7.88 per day, and for the 4 additional hours at the punitive rate of his regular assignment because those hours were in excess of his regularly assigned hours, less what he received.

This is a companion case to Docket No. CL-3354, Award No. 3444, which involved a prior agreement. However the principle involved is the same in both cases and leads to the same decision under the current agreement applicable to this case.

For the reasons stated in Award No. 3444 the claims will 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 the Petitioner.

AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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