

Award No. 3744
Docket No. CL-3645

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

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 Employes that the Carrier violated the Clerks' Agreement:

1. When, during the period of November 1, 1945 to Feb. 9th, 1946, it failed to call Clerks Thomas H. Allsup, Robert O. Walker, Francis A. Mayer and Emilio F. English to perform unassigned clerical work in the Diesel Shop at Havre, Mont.
2. That the above named employes be compensated for all monetary losses sustained account of failure of the Carrier to call them for the performance of this work which involved work performed during their regular assignment; work performed before and after their regular assignment and work involving Sundays and holidays.

EMPLOYES' STATEMENT OF FACTS: Just prior to the date of this claim the Carrier completed a large Diesel shop at Havre, Montana, and put the shop in operation. On Nov. 1, 1945, a force of mechanics and helpers, including two foremen being assigned to the Diesel shop on that date. The assigning of this force placed the Diesel shop in operation which, naturally, involved a certain amount of clerical work.

Starting on Nov. 1st, this clerical work was performed by the foreman and he was assisted by the clerks at the roundhouse, which necessitated their working some overtime for which they were paid the overtime rates of their position. This continued until Nov. 20, 1945, when one Uncle Bailey returned from military service to the Havre roundhouse. He was a machinist's helper and was immediately assigned to performing clerical work at the Diesel shop. He was carried on the roundhouse payroll as a machinist's helper—later as an electrician's helper, but in reality performed clerical work in the Diesel shop office, working from 7 A. M. to 4 P. M. and on certain days even overtime.

After he was assigned to the clerical work, claims were filed by the roundhouse and car office clerks who desired that work, but they were advised that no authority existed for a clerk at the Diesel shop and, consequently, were denied the work.

On Dec. 7, 1945, a position of steno-clerk at the Diesel shop with a rate of \$6.74 per day (rate the same as roundhouse clerk) was bulletined.

responsibility on their part with that of the Carrier, since both are parties to the contract, but having failed to either bid on the position or to furnish an applicant therefor they now take exception to the Carrier's filling such position as best it could in an emergency, and make claim in behalf of certain employes who did not apply for the work and who failed to properly perform it when given an opportunity to do so during a period of over three weeks.

The Carrier feels, therefore, that it, in no wise, violated any rule of the Clerks' Agreement in its use of Mr. Bailey in this case, that the claim before your Board is therefore completely without merit and that it should be so held.

Exhibits not reproduced.

OPINION OF BOARD: The System Committee of the Brotherhood claims the carrier violated their agreement when, during the period from November 1, 1945, to February 9, 1946, it failed to call clerks to do clerical work in its Diesel Shop at Havre, Montana, and that certain employes named be compensated for all monetary losses sustained because thereof.

The record discloses that on November 1, 1945, the carrier put in operation, its Diesel Shop at Havre, Montana by assigning thereto a force of mechanics and mechanics' helpers, including two foremen. Starting with this date, and up until November 24, 1945, the carrier had three clerks at the Roundhouse do the clerical work necessary therein. It was done on an overtime basis. On the latter date the carrier assigned Uncle Bailey, a machinist and/or electrician's helper and an employe not under the parties' agreement, to do this work. He continued to perform these duties until February 9, 1946, when they were assigned to a stenographer, who was employed on that date.

Work belonging to those under an agreement cannot be given to those not covered by the agreement. This is true even if in performing the work it is necessary for the employes subject to the agreement to work overtime in order to perform the work.

It is self-evident that the work performed by Bailey, during the period from November 24, 1945 to February 9, 1946, was within the scope of the parties' agreement and to assign it to one not covered by the agreement and permit him to do it is in violation thereof.

Until the carrier properly assigned someone to perform this work it belonged to these claimants and, if necessary, on an overtime basis, as was done during the period from November 1 to November 24, 1945.

The question arises as to whether the claim should be allowed on a pro-rata or overtime basis. We have examined the awards of this division and have come to the conclusion that the facts here bring it within the principle stated in Award 3277 and approved in 3371 and 3375 and that it should be allowed as overtime, that is, time and one-half.

This principle is stated in Award 3277 as follows:

"The penalty rate for work lost because it was given to one not entitled to it under the Agreement is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work."

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 the rules of the agreement have been violated.

AWARD

Claim sustained as to the work performed by Uncle Bailey during the period from November 24, 1945 to February 9, 1946 on the basis of time and one-half.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.