

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 Mrs. Gladys Neilson shall be paid at the rate of time and one-half for service performed in excess of eight hours as follows: from 12:00 noon to 4:00 P. M., October 20, 1945; from 12:00 midnight to 8:00 A. M., November 5, 1945; from 8:00 A. M. to 4:00 P. M., November 7, 1945; and from 8:00 A. M. to 4:00 P. M., November 14, 1945, or a total of twenty-eight (28) over-time hours actually worked.

EMPLOYEES' STATEMENT OF FACTS: This dispute results from Carrier's refusal to pay so-called extra and/or off-in-force-reduction employees at the rate of time and one-half for time in excess of eight hours on any day. So far as the Employees have been able to develop, Carrier paid all employees time and one-half for time in excess of eight hours on any day under the provisions of the current agreement from its effective date up until about October 1, 1944, at which time they took the position that extra and/or off-in-force-reduction employees were not entitled to punitive rate for time in excess of eight hours.

Mrs. Gladys Neilson, whose Class 1-2 seniority date on the Eastern Division station seniority roster is July 3, 1944, was an off-in-force-reduction employe and was used to fill temporary vacancies during the months of October and November 1945. During the period this employe was thus engaged she was required to and did work in excess of eight hours on any day on a number of occasions as reflected by the following statement:

Date	Pos. No.	Rate of Pay	Hours W'k'd	Total Hours W'k'd	Hours Paid	Hours Claimed	Balance Payable
10-13-45	1020	\$6.71	8:00a— 4:00p				
	1036	6.93	4:00p—11:59p	16	16	4	PAID
10-20-45	1070	6.71	11:59p— 8:00a				
	1020	6.71	12noon— 4:00p	12	12	14	2
11- 3-45	1035	6.93	4:00p—11:59p				
11- 4-45	1020	6.71	8:00a— 4:00p	16	16	4	PAID
11- 5-45	1020	6.71	8:00a— 4:00p				
	1065	6.93	11:59p— 8:00a	16	16	20	4
11- 6-45	1065	6.93	11:59p— 8:00a				
11- 7-45	1015	6.93	8:00a— 4:00p	16	16	20	4
11-13-45	1040	6.71	4:00p—11:59p				
11-14-45	1020	6.71	8:00a— 4:00p	16	16	20	4
TOTAL							14

completing protection of a temporary vacancy, and resuming the status of an off-in-force-reduction employe, it so happened was thereafter recalled to service, in conformity with the provisions of Article III, Section 10-a on another or second temporary vacancy within twenty-four (24) hours. She clearly had no assigned hours between the completion of the first vacancy and the start of the second vacancy, and the letter-agreement could not by any possible conception have had application in the instances covered by this dispute.

In conclusion the Carrier desires to reassert that the Third Division's determination of this dispute must necessarily be based on the language of the agreement rules (Article VI, Section 1 and Article VII, Section 1) of the current Clerks' Agreement in effect between the parties to this dispute and not upon the language of the differently worded overtime rules heretofore interpreted in prior awards of the Third Division and which rules did not include the language "continuous with and outside of regular assigned hours" which appears in the overtime rule (Article VII, Section 1) relied upon by the Brotherhood in this dispute. The Board's determination of the Brotherhood's claim in this dispute on the basis of the language contained in the overtime rule (Article VII, Section 1) of the agreement in effect between the parties to this dispute will clearly warrant a complete denial of the Brotherhood's claim whereas a sustaining award would constitute a modification or revision of the agreement rule (Article VII, Section 1) which the parties had agreed to in good faith. Such a revision can only be accomplished through the process of negotiation as required by the amended Railway Labor Act.

The instant dispute is clearly without merit or schedule support and must be denied.

The Carrier is uninformed as to the arguments the Brotherhood will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

OPINION OF BOARD: The claim presented herein is similar to that presented in Award 4201. Its disposition is governed by the same principles which are fully set forth in the Opinion of the Board in that case. Accordingly, the claim should 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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.