

**Award No. 4351**

**Docket No. CL-4331**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Francis J. Robertson, Referee**

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**PARTIES TO DISPUTE:**

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

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

**STATEMENT OF CLAIM:** Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement:

(1) When it released the employees of the so-called "Dog Watch Crew" on January 13, 1948, prior to completion of their regular assignment, and

(2) That employees named in claim dated January 15, 1948 attached as Employees' Exhibit "A" be compensated for wage loss suffered as therein stipulated.

**EMPLOYEES' STATEMENT OF FACTS:** The employees involved are assigned to third shift positions in the "Mail and Baggage Department" of the Carrier and are and have been regularly assigned to work nine and one-half hours daily. On the morning of January 13, 1948, these employees were notified by their supervisors to stop work at 7:30 A. M. in most cases, in others, at 8:00 A. M. and in one case at 8:30 A. M. and were not paid for time released prior to regular quitting time.

Attached as Employees' Exhibit "B" are the Assignment Bulletins covering the positions in question. All of the positions in the Mail and Baggage Department were bulletined in November, 1947 as the result of a change in Rules eliminating the Note at the bottom of Rule 44 in the present agreement. Attached as Employees' Exhibit "C" is copy of Bulletin No. 468, dated 2/1/47, showing the manner in which individual positions on Dog Watch Crew were bulletined prior to November 23, 1947 and the intent of the note appearing on assignment bulletins issued on or about that date, Employees' Exhibit "B".

The positions have remained on this schedule for a long period of years and employees occupying same had not been released before 9:00 A. M. for ten years or more prior to the date in question, and have not been released before that time since that date except in cases where individual employees requested a leave of absence in cases of necessity and then some of the employees have been refused in their requests to leave at 7:30 A. M.

Copies of correspondence in the handling of these claims to and including the highest officer with whom grievances are handled are attached as Employees' Exhibits "D" to "H".

**POSITION OF EMPLOYEES:** There is an agreement between the parties bearing the effective date of April 1, 1945, from which the following rules are quoted:

work until 9:00 A. M. each morning, or if they choose to go home earlier than 9:00 A. M., they must be excused by one of the foremen in charge."

This confirms exactly what we have been saying about the hours of the regular assignment (he says that they were from 11:00 P. M. to 7:30 A. M., or eight hours exclusive of the thirty-minute meal period) and the necessity for overtime work, which he admits must be authorized. The notation referred to was simply for the purpose of informing the employees of the likelihood of working overtime. It did not guarantee that it would be worked and in the absence of any such guarantee in the contract, the claim falls of its own weight.

(Exhibits not reproduced.)

**OPINION OF BOARD:** There is no dispute about the facts in this case. The Claimants are assigned to positions in the Mail and Baggage Department of the Carrier. Their shift begins at 11:00 P. M. and for years prior to January 13, 1948, they were regularly required to work 1½ hours overtime, or until 9:00 A. M. On the morning of January 13, 1948, they were sent home at 7:30 A. M., after completion of eight hours of work. After that day they have been regularly required to work until 9:00 A. M.

It appears that a blanket bulletin was published November 23, 1947 showing these employees as having hours of duty 11:00 P. M. to 7:30 A. M. with the note: "This crew at the present time works 1½ hours daily overtime or until 9:00 A. M." Employees have filed claim for 1½ hours at penalty rate for the employees affected by the dismissal at 7:30 A. M. on the 13th.

It has been argued that Carrier by the assignment bulletin assured the employees work until 9:00 A. M. when they bid the job in. It is to be noted that the blanket bulletin showed the hours of the position to be 11:00 P. M. to 7:30 A. M. and then carried the further information that **this crew at the present time works 1½ hours overtime daily**. Thus, the regular hours were an established thing and could not be changed, except in accordance with the Agreement. However, by the use of the language at the **present time** there was an indication that the overtime would not necessarily be a continuing thing. There is no doubt that the overtime generally required on the positions was an inducing factor to senior employees bidding thereon. But when they bid on such positions they knew, or should have known, that they were taking the risk that the overtime work might be discontinued, since the rules of the Agreement do not guarantee overtime, but, on the contrary, provide that no overtime hours will be worked except by direction of proper authorities. The only guarantees of the Agreement with respect to hours of work on regular assignments were 8 hours per day and six days per week.

It has been further asserted by the Employees that Rule 41 (Absorbing Overtime) was violated in that the employees were required to "suspend work during regular hours to absorb overtime". That argument does not appear tenable to us for there was no suspension of work of these employees during their regular hours and no work performed after such regular hours. In this connection, the introductory paragraphs of a letter of the Local Chairman to Carrier's Baggage Agent dated January 15, 1948 appearing in the record herein are revealing. They read as follows:

"For the past several years the so-called Dog Watch Crew has been working 1½ (one and a half) hours overtime each night, this overtime being regularly assigned by bulletin under the old set-up prior to November 23, 1947.

Under the new set-up, meaning the new agreement that went into effect November 23, 1947, the bulletin has note attached which reads as follows: 'This crew at the present time works 1½ (one and one-half) hours overtime daily or until 9:00 A. M.'

The regular hours for this crew is from 11:00 P. M. until 7:30 A. M., it is understood by the men working this shift that they will work until 9:00 A. M. each morning, or if they choose to go home earlier than 9:00 A. M., they must be excused by one of the foremen in charge."

The quoted paragraph of this letter reveal two things: (1) A change from a pre-existing regular assignment of the overtime, and (2) an admission that the regular hours are from 11:00 P. M. to 7:30 A. M. These factors in our opinion defeat the contention that Rule 41 was violated.

We find no other rule of the Agreement nor understanding outside thereof which sustain the claim and even though we feel there is substantial equity on the part of the employees, we are constrained to hold that a denial Award is in order.

**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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.