

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**

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY**

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

(a) That Carrier violated Agreement rules when it failed and refused to allow O. T. Klaenhammer, Clerk, assigned incumbent of revising clerical Position 4, rate \$11.14 per day, St. Paul Local Freight Station office, compensation claimed for February 25 and 26, 1948, and

(b) That Carrier shall now reimburse Clerk Klaenhammer \$8.64 for February 25 and \$7.28 for February 26, 1948, under provisions of Rule 51 of current Rules Agreement, dated and effective July 16, 1926.

EMPLOYEES' STATEMENT OF FACTS: O. T. Klaenhammer, with seniority date of July 30, 1913, on St. Paul Station Class 1 seniority roster, was the assigned incumbent of Revising Clerk Position 4, rate \$11.14 per day.

On February 25 and 26, 1948, Clerk Klaenhammer had permission to be absent from duty to attend the funeral of his brother-in-law at Menomonie, Wisconsin.

On his return to duty, February 27, Clerk Klaenhammer submitted Carrier Form OD 309, request for compensation for February 25 and 26 under provisions of Rule 51, account while his and other positions had been filled, Position 22, rate \$8.64 per day had not in turn been filled on February 25 and Position 15, rate \$7.28 per day, had not been filled on February 26, both vacancies created by his absence.

Clerk Klaenhammer had qualified by length of service under provisions of Rule 51 for this compensation and Carrier having blanked positions due to his absence also had qualified him for payment of compensation claimed.

Claim was declined in letter of Agent of March 11, which states in part "For your information our Company cannot grant your request for wages on those days as the circumstances are not of such a nature that in this instance can be applied to the provisions as illustrated in BRC Rule 51."

On appeal, Clerk Klaenhammer's claim was in turn declined by Superintendent of Twin City Terminal Division and Director of Personnel.

When Clerk Klaenhammer was absent Carrier had the option of filling all of the vacancies created by his absence and avoid claim now before this Honorable Board, having failed to do so Carrier is obligated to compensate him under Rule 51.

Carrier has not attempted to make any showing of practice of declining claims under Rule 51 nor agreement on what should constitute good and sufficient reasons either in conference or by correspondence, just relying on the contention that Rule 51 expressly denies superior officers the authority to overrule a supervisor when supervisor's action results in arbitrarily eliminating Rule 51 from the Rules Agreement.

Employees call to this Honorable Board's attention that since Award 1524 of July 1941, all claims under Rule 51 that have been appealed have been allowed by Director of Personnel with one exception which Employees agreed would not be honored.

Employees now ask that this Honorable Board sustain claim for Clerk Klaenhammer as outlined in Statement of Claim.

CARRIER'S STATEMENT OF FACTS: O. T. Klaenhammer, Clerk, St. Paul Freight Office, absented himself from duty February 25 and 26, 1948, stating as reason therefor that he attended the funeral of his brother-in-law.

Rule 51, clerks' schedule, provides:

"Employees will be granted time off on account sickness or for other good and sufficient reasons, with pay, providing the work is kept up without additional expense to the Railway Company—the supervising officer to be the judge, as follows:

(a) Employees who on January 1st have been in the service one year and less than two years—one week or six working days.

(b) Employees who on January 1st have been in the service two years or more—two weeks or twelve working days."

POSITION OF CARRIER: It is the position of the carrier that under the plain language as contained in rule 51, i. e., that the supervising officer is to be the judge as to allowances under provisions thereof, this board has no jurisdiction.

OPINION OF BOARD: This is a companion case to Award No. 4434.

Inasmuch as the material facts are similar insofar as the issue presented by that docket and this docket are concerned, we believe that a sustaining award is in order, for reasons appearing in the Opinion of the Board in the previous case.

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 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 30th day of June, 1949.