

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated the provisions of Rules 29, 31 and 40 when it blanked the positions of Assistant AFE Accountant and Statistical Clerk December 17, 1947.

(b) The Carrier violated Rule 20 of the Agreement by requiring Mr. J. L. Musillani, Assistant AFE Accountant, and Mr. H. W. Hamilton, Statistical Clerk, to suspend work during regular hours on December 17, 1947, to absorb overtime.

(c) Messrs. Musillani and Hamilton be compensated for 8 hours each for December 17, 1947, at the rate of their regular assignment, in addition to the 8 hours already allowed them for service performed as Assistant Timekeepers on this date.

EMPLOYEES' STATEMENT OF FACTS: On December 17, 1947, two Assistant Timekeepers in the Timekeeping Department were absent from duty due to death in the family etc. Neither of these employees were entitled to nor received pay for time lost under "Sick Leave" Rule 52.

Mr. J. L. Musillani, Assistant AFE Accountant, and Mr. H. W. Hamilton, Statistical Clerk, were required to leave their respective positions on December 17, 1947, to perform the duties of the absent Assistant Timekeepers, and this action resulted in their own positions being blanked on this date.

POSITION OF EMPLOYEES: The following rules are cited from the current Agreement bearing effective date of December 16, 1943:

RULE 11: "Employees assigned temporarily to higher rated positions shall receive the higher rate. Employees assigned temporarily to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position, whether the regular occupant is absent or present; merely assisting a higher rated employe during a temporary increase in the volume of the work does not constitute a temporary assignment."

RULE 20: "Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one

to the time already allowed them for their regular assignment; citing rules 20, 29 and 31, Clerks' Agreement, and National Railroad Adjustment Board Awards 2884, 3416, 3417 and 3418, Third Division.

DECISION:

I do not agree with you that the method in which the work was handled in the Office of Superintendent of Motive Power on December 17, 1947, constituted violation of any of the provisions of the Clerks' Schedule or warranted any additional compensation to be paid to J. L. Mussillani or H. W. Hamilton.

Claim is denied.

Yours truly,

(Sgd) H. R. Fegley

Assistant to General Manager.

cc: GWC
JJD
WJO"

Carrier contends that the schedule was not violated and that there is no justification for paying Assistant AFE Accountant any more than the \$10.71, or the Statistical Clerk any more than the \$10.61 already allowed for the work performed on December 17, 1947.

OPINION OF BOARD: On December 17, 1947, two Assistant Timekeepers laid off because of deaths in their families. The Carrier directed an Assistant AFE Accountant and a Statistical Clerk to perform the work of the two Assistant Timekeepers. The Organization contends that this is a violation of the Agreement, particularly Rules 20, 29, 31 and 40. The positions of the two Assistant Timekeepers were assigned the same hours as the employees used in their stead, the positions of the latter being blanked.

We have held many times that an employee cannot properly be required to suspend work on his regularly assigned position in order to work on another position except in emergencies. To so do in violation of this principle is considered a suspension of work to absorb overtime in violation of Rule 20, current Agreement. Where such a violation is found to exist, the employee suspended from his regular assignment will be paid for eight hours at his regular rate for each day that he is denied the right to work his regular assignment. Awards 2346, 2695, 2823, 2859, 3417, 4075, 4352. An affirmative award is required.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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;

This this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of July, 1948.