

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Carrier violated and continues to violate the Rules of the Clerks' Agreement when it refused and continues to refuse to assign the employes at Mojave, California, in accordance with Rule 17.

(b) That employes Roy B. Pettitt, Ray Danel, Ralph Flores and Oliver C. Hill and/or their successors, and all other employes similarly affected, be compensated at the rate of time and one-half, in addition to compensation already allowed, each day, for all time required to report in advance of the hours specified in Rule 17, retroactive to October 27, 1950, on which date the Division Chairman formally presented the dispute and claim to the Division Superintendent.

EMPLOYEES' STATEMENT OF FACTS: 1. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its Employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, bearing effective date of October 1, 1940, which Agreement (hereinafter referred to as the Agreement) was in effect on the dates involved in the instant claim. A copy of the Agreement is on file with this Board and by reference is hereby made a part of this dispute.

2. On October 27, 1950, the station force at Mojave California, consisted of twenty (20) regular positions, properly rated and classified under the Agreement, assigned to perform service as follows:

| Position No. | Title | Assigned Hours |
|--------------|-------------|---|
| 8 | Tkt. Clerk | 11:30 p.m., to 7:30 a.m. |
| 9 | Tkt. Clerk | 7:30 a.m., to 3:30 p.m. |
| 11 | Cashier | 7:00 a.m., to 4:00 p.m. (1 hr. meal period) |
| 12 | Train Clerk | 8:00 a.m., to 4:00 p.m. |
| 13 | Train Clerk | 4:00 p.m., to 12:00 mn. |
| 14 | Train Clerk | 12:00 mn, to 8:00 a.m. |

could not have been sustained; such provisions are not incorporated in the current Southern Pacific clerks' agreement and the carrier submits that the claim in the instant docket likewise cannot be sustained.

CONCLUSION

The carrier asserts that it has established that the claim in this docket is without merit or basis, and that it should be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood claim Carrier failed to assign clerical employees at Mojave, California, in accordance with Rule 17 of their Agreement. It asks, because thereof, that certain named employees, their successors, and all other employees affected thereby be compensated, retroactive to October 27, 1950, for all time worked on assignments prior to 5:00 A. M. at time and one-half when such assignments started after midnight but before 5:00 A. M.

The facts are not in dispute. As of October 27, 1950, Carrier's clerical force used in connection with its station facilities at Mojave consisted of 20 regular positions. Of these nine were assigned on a "three consecutive shift" basis or around the clock. They were the positions of Ticket Clerk, Train Clerk, and Clerk Baggage. None of the other 11 positions were assigned on a "three consecutive shift" basis or around the clock. These positions were: Seven Mail, Baggage and Freight Handlers; one Cashier; one Transfer Foreman; one Receiving and Delivery Clerk; and one Stower. Of this latter group there were three positions that started between midnight and 5:00 A. M. They were the Receiving and Delivery Clerk with a starting time of 1:00 A. M., Stower with a starting time of 1:00 A. M., and a Mail, Baggage and Freight Handler with a starting time of 2:00 A. M. It is the latter three positions with which this claim concerns itself.

Rule 17 of the parties' Agreement is as follows:

"Three Shift Positions

"Where three consecutive shifts are worked covering the 24-hour period no shift will have a starting time after 12 o'clock midnight and before 5 A. M.

The Committee contends that at any point or location on the Carrier, where continuous shifts are maintained, this rule prohibits Carrier from giving any assignment at that point or location, which is covered by the Agreement, a starting time contrary to the limitation contained therein.

On the other hand Carrier contends the words "no shift," as contained in the rule, relate to the subject of the rule, "Three Shift Positions," and consequently if the positions involved are not in that category the rule, and its limitations, has no application thereto.

We think the Committee's construction of the language used is too broad and the Carrier's too narrow. The subject matter of the rule is "Three Shift Positions" and the rule relates to the class of work performed upon that basis. When, at any point or location, a class of work is performed on that basis all positions performing that class of work come within the provisions thereof regardless of whether there are more positions on one shift thereof than on another. But that does not mean that positions performing other classes of work at such point or location, but coming under the Agreement, are restricted by the rule. It is only when the work of the position comes within the class that is being done on a three consecutive shift basis does the midnight to 5:00 A. M. starting restriction of Rule 17 apply thereto.

In view of the factual situation involved therein, the rule being the same, the following language of Award 1395 of this Division is to like effect. Therein it was stated: "That (the rule) means that neither any one of the existing shifts, nor any shift additional thereto, will have a starting time within the prohibited period of 5 hours."

Although involving a different rule, which was the basis for the decision made therein, the author of Award 1591 of this Division discusses the rule here involved as follows: "This Rule was identical with Rule 7 of Decision 757 of the United States Railroad Labor Board. This Rule when promulgated was ambiguous. It might have been construed in either of two ways. It might have been taken to mean that where there are three consecutive shifts, no one of these shifts shall start between midnight and five A. M. Or it might have been taken to mean that at points where there are three consecutive shifts no one of these shifts or any other shift (of the same class of employes) shall start between midnight and five A. M. The second of these two interpretations (which is in substance the one contended for now by the employes) was adopted by the United States Railroad Labor Board in Decision 3732 (a Telegraphers' case) and in 4147 (a Clerks' case). Decision 2766 also pointed in the same direction. On July 13, 1938, over two years before the parties rewrote the Rule now before us, this Board in Award 685 affirmed the interpretation which had been laid down by the United States Railroad Labor Board."

Other Awards of this Division have been cited but are not here pertinent for the reason that in some, although the rule is the same, the Awards are not based thereon while in others the controlling rule is materially different. In the former class are Awards 3821 and 5327, while in the latter class are Awards 1325, 1471, 1591, 1641, 1643, 1690, and 1819.

Applying the foregoing construction of Rule 17 to the factual situation disclosed by the record before us we find the claim to be without merit.

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 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

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1952.