

Award No. 6157
Docket No. CL-5930

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD CO., SAN ANTONIO, UVALDE & GULF RAIL-
ROAD CO., SUGARLAND RAILWAY COMPANY, ASHERTON
& GULF RAILROAD COMPANY**

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

- (a) The Carrier violated the Clerks' Agreement at Kingsville, Texas, on Saturday and Sunday, February 17 and 18, 1951, by failing and refusing to call Mrs. Mary Elmore to work on those days, and using instead a junior employee. Also
- (b) Claim that Mrs. Elmore be paid in full the amount she would have earned had she been called to work.

EMPLOYEES' STATEMENT OF FACTS: On Friday, February 16, 1951, Mr. Schmidt, Auditor Freight and Passenger Accounts, contacted Division Chairman Ligon and advised that a stenographer would be required to work on Saturday, February 17, and possibly Sunday, February 18, 1951. Mr. Schmidt asked Mr. Ligon which of the four stenographers should be called for the work.

Mr. Ligon informed Mr. Schmidt that the senior of the four should be called.

Mr. Schmidt then notified the senior stenographer, Mrs. Brouillette, to protect the work.

Mrs. Brouillette was unable to accept the call because her husband was to undergo an operation Saturday, February 17, 1951.

Instead of then calling Mrs. Elmore, the next senior stenographer, Mr. Schmidt called Mrs. Rainbolt.

Upon handling on appeal with the Assistant General Manager the violation was admitted and payment at straight time rate was made.

"February 7, 1951
159-7-H

Mr. J. L. Dyer
General Chairman, BRSC
Houston, Texas

Dear Sir:

Your File G-1984, in regards to claim of W. A. Handorf, Yard Clerk, Palestine, for 8 hours at time and one-half September 7, 8, 9, 10 and 11, account not used to work position of Line Desk Clerk #3 and using employee that was assigned to regular position, Velasco.

In line with various Board Awards covering payments of this kind, am agreeable to allowing Mr. Handorf straight time for days in question, which will be allowed on next payroll period.

Yours truly,

/s/ E. C. Sheffield
Superintendent"

It will be observed that in the above case while claim was made for payment at the time and one-half rate the settlement was made at the straight time rate by the superintendent. We assume that payment was satisfactory since the Carrier has heard nothing further from the Organization concerning the matter.

It is not considered necessary to burden the record by citing other additional similar settlements on the property with this same Organization, the Carrier believing that the above references of previous rulings of your Board, on both this property and others, together with the voluntary settlements made on this property with the same General Chairman, will serve to show beyond any reasonable question of doubt the precedents established, not only by your Board but by the organization itself. Obviously the above referred to cases clearly support the payment already made by the Carrier in this case at the straight time rate, and deny the Employees' contention that payment should be made at the overtime rate. Therefore, it is the position of the Carrier that the Employees' claim as here presented be unqualifiedly denied.

All matters contained in this submission have been the subject of discussion and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are undisputed and the Carrier admits the rules were violated.

The sole question presented is whether or not the claimant should be paid at pro rata rate or time and one-half for the Carrier's failure to call her to work.

The claimant was employed by the Carrier as a typist in the office of the Auditor of Freight and Passenger Accounts, Kingsville, Texas. The assignment is a five-day position, with Saturdays and Sundays rest days.

A typist was needed on Saturday, February 17, 1951, and Sunday, February 18, 1951. The Carrier called a person to work who held less seniority than the claimant.

Eight hours' service was rendered on Saturday and two and one-half hours' service was rendered on Sunday, the days in dispute.

The Carrier offered to pay the claimant, Mary Elmore, ten and one-half hours' pay at the pro rata rate.

Rule 37 (c-5), Service on Rest Days, provides:

"Service rendered by employes on assigned rest days shall be paid for under Rule 43 * * *."

"Rule 43. Notified or Called," provides, among other things, for payment of time and one-half if held in excess of two hours.

Rule 37 (c-2) and (c-3) provides, among other things, for time and one-half for employes worked more than forty hours or more than five days.

These cited rules all contemplate work performed. The right to perform work is not the equivalent of work performed. In the instant case, the claimant did not perform the work. Therefore she was not entitled to receive time and one-half. Claimant is entitled to be paid the pro rata rate.

From the record in this case, it is our understanding that this claimant has been paid for ten and one-half hours at the pro rata rate. If she has not, then the Carrier must pay the pro rata rate.

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

The Agreement was violated.

AWARD

Claim (a) sustained.

Claim (b) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of March, 1953.