

Award No. 6560
Docket No. CL-6388

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

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

THE NORTHERN PACIFIC TERMINAL OF OREGON

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(a) That Carrier violated rules of the Clerks' Agreement when Mr. L. W. Sweeney, regularly assigned to job 469, Car Checker, Portland, Oregon, Yards, 3 P. M. to 11 P. M., was required (by Management) to suspend work on his regular assigned position (job 469) to fulfill the duties attached to job 432, 8 A. M. to 4 P. M., on April 11, 1950, and job 453, 3 P. M. to 11 P. M., on April 14, 1950.

(b) That Mr. Sweeney be additionally paid the daily wage rate, namely \$12.42 attached to his regular assigned job 469, on each date—April 11 and 14, 1950.

EMPLOYEES' STATEMENT OF FACTS: The claimant, L. W. Sweeney, is regularly assigned to Yard Clerk job 469, rate \$12.42 per day, hours 3 P. M. to 11 P. M. with Wednesday and Thursday of each week as designated rest days, in the Portland Yards.

R. Hathorn is regularly assigned to job 432, rate \$12.70 per day, hours 8 A. M. to 4 P. M. He was off on one of his designated rest days on Tuesday, April 11, 1950. Relief Clerk, Doris Evatt, who was regularly assigned to the relief position that required work on Hathorn's assignment, laid off on Tuesday, April 11, 1950.

R. Barncord is regularly assigned to job 453, rate \$13.22 per day, hours 3 P. M. to 11 P. M. He was off on one of his designated rest days on Friday, April 14, 1950. Relief Clerk O. Schroder, who was regularly assigned to the relief position that required work on Barncord's assignment, laid off on this date.

All three positions—Sweeney's job 469, Hathorn's job 432 and Barncord's job 453—are designated as seven-day positions by Management in the application of the 40-Hour Week Rules of our Agreement.

On April 11, 1950, to fill the vacancy on job 432 caused by Doris Evatt laying off, Management called claimant Sweeney to fill this assignment from 8 A. M. to 4 P. M. and suspended him from working his regular assigned

"... and all data submitted in support of Carrier's position must affirmatively show the same to have been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute." This is not due to intention or negligence of the Carrier.

OPINION OF BOARD: The Carrier objects to the Division taking jurisdiction of this dispute on the ground that it was not handled on the Railroad property as required by the Railway Labor Act and the Adjustment Board rules.

The claim as originally filed by Sweeney, the Claimant here, was:

"Time $\frac{1}{2}$ claimed account working 2nd 8 hr. shift within 24 hours. working Job 432 by application under provisions of second sentence of Rule 11 (b).

L. W. Sweeney

"Overtime claimed under Rule 37 (a)."

This claim was for April 11, 1950. On that day, Claimant worked his regular assignment on Job 469 from 3 P. M. to 11 P. M., as well as Job 432 from 8 A. M. to 4 P. M. in accordance with his application. He thus worked two shifts within 24 hours, the last hour extending beyond this period. Rule 37(a) provides that "Time in excess of eight (8) hours . . . in any twenty-four (24) hour period, shall be considered overtime and paid . . . at the rate of time and one-half."

The dispute submitted here, as it appears in the Statement of Claim at the head of this Award, is quite a different one. In place of a request for 8 hours' overtime on Job 432 under Rule 37(a), we have a claim for straight time pay on Job 469 under Rule 39 because Claimant "was required (by Management) to suspend work on his regular assigned position (Job 469)." And this new claim is not confined to April 11, 1950, but includes also April 14, when he is alleged to have been suspended to work Job 463, 3 P. M. to 11 P. M. Rule 39 provides that "Employes will not be required to suspend work during assigned hours to absorb overtime."

The record shows that the original claim for working two shifts within 24 hours on April 11 was handled in the usual manner by correspondence and conferences with the Carrier, and no mention was made that Rule 39 was involved or that Claimant was suspended from his assignment to Job 469 and what pay was due for that. As for the April 14 claim, the Carrier stated in its ex parte submission that it had received no claim for this date at all, and the Employes in their rebuttal submission withdrew this part of the instant claim. But the claim for April 11 submitted here, based as it is on absorbing overtime in violation of Rule 39 was also not filed as such with the Carrier. This, like the claim for the 14th, was not handled and considered on the property as required by the Railway Labor Act and the rules of the Board pursuant thereto.

Accordingly the dispute submitted to the Division must be dismissed for lack of jurisdiction.

(Exhibits not reproduced. Page reference relates to original document.)

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 Employes involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board does not have jurisdiction over the dispute involved herein; and

That the dispute was not handled on the property as required by Railway Labor Act and Board rules.

AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of April, 1954.