

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

**MISSOURI PACIFIC RAILROAD COMPANY
GUY A. THOMPSON, Trustee**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on Friday, April 18, 1952, Dolores Oldenburg, Machine Operator-Clerk, rate \$14.28 per day, Auditor Freight Receipts unit of the Consolidated Accounting Machine Bureau was absent account of illness and the Carrier moved Dolores M. Krause, Comptometer Operator, rate \$12.92 per day, from her position to fill the Machine Operator-Clerk position vacancy account Dolores Oldenburg absent, and failed and refused and continued to refuse to allow Dolores Oldenburg the day's wages, amount \$12.92 per day of Dolores M. Krause, Comptometer Operator position which was blanked and was not filled on April 18, 1952;
2. The Carrier shall be required to compensate Dolores Oldenburg in the amount of \$12.92 for April 18, 1952, in accordance with the accepted construction of a proper application of Sick Leave Rule 40 of the Clerks' Agreement effective July 1, 1943.

EMPLOYEES' STATEMENT OF FACTS: Dolores Oldenburg is listed on the Group 1-A (Clerks) seniority roster of the Auditor Freight Receipts office as of March 7, 1951 and on Friday, April 18, 1952, was the regularly assigned occupant of position of Machine Operator-Clerk, rate \$14.28 per day, Monday through Friday. Saturday and Sunday were unassigned days for the position to work.

Dolores M. Krause is listed upon the seniority roster of Machine Operators, designated as Group 1-B, Machine Operators' roster of the Auditor Disbursements office with a seniority date of July 17, 1951, and on Friday, April 18, 1952, was regularly assigned to a position of Comptometer Operator, rate \$12.92 per day, in the Auditor Disbursements unit of the Consolidated Machine Bureau, Monday through Friday. Saturdays and Sundays were unassigned days for the position to work.

On Friday, April 18, 1952, Dolores Oldenburg was absent from work account illness and on this day the Carrier moved Dolores M. Krause from her Comptometer Operator position in the Auditor Disbursements office and

would be kept up only if the "other employees" pitched in and did it while the sick employe was absent, and we think it would be obvious even then that keeping up the work would be manifested only by some of the other employes working more than their regular hours.

While the work in this case was not kept up on April 18, the record shows it was subsequently performed by another employe—but not without cost to the Carrier, which is a part of the condition precedent to the payment of a sick leave allowance. The Carrier paid Miss Krause the compensation of the Machine Operator-Clerk position on the day the claimant, incumbent of that position, was absent account illness and it paid the relief employe the compensation of Miss Krause's position. Whether the work may be said to have been kept up or caught up, it was **not** done without cost to the Carrier.

The Employes have implied their opinion that the Carrier merely took advantage of this situation to get an **additional** day's work without extra payroll expense. Our answer to this is just what we have previously stated—it is obvious that when one employe in a given force is absent and no other employe works any extra hours the work of the absent employe is just not done or an equivalent amount of work on other positions is lost. Otherwise, we would have to have one unnecessary position in the force. We are aware that in many cases "other" employes, by leaving some of their work undone can handle the necessary portion of the absent employe's duties and then all involved can later catch up on their work after return of the absent one. In such cases the Carrier has been allowing the sick leave pay. But, in this case it was necessary to have the work of the absent employe done on the day she was absent. It was also necessary to have done the work Miss Krause would have done on the Comptometer Operator position if she had not been moved up onto the Machine Operator-Clerk position. Just because the Carrier did not have available at the moment an employe to do this work is not, in our opinion, a sound basis for this claim and cannot properly be used as an argument that the work was kept up and the use of the relief employe on April 22 was on some additional work that had no connection with this loss of work on April 18.

We think the making of payments in the past in cases of this kind when it was necessary to incur the full payroll cost, precludes any serious consideration of a charge that the Carrier used the relief employe on April 22 to get some additional work done and avoid making a sick leave payment. The fallacy in such implication is that the Carrier supervisors have no way of knowing when someone is going to report sick and it is only when there is need to fill all of the positions that this is done, while in other cases the sick leave allowance has been made in equity when it is obvious that the work has not actually been kept up.

It is the position of the Carrier that the facts in this case are obvious to the effect that the work was not kept up by other employes without cost to the Carrier and therefore the condition precedent to a sick leave allowance under the rule is absent.

(Exhibits not reproduced.)

OPINION OF BOARD: The only question presented by this claim is whether the employing officer of the Carrier was properly satisfied that "additional expense to the Carrier" was involved by reason of Claimant's one day absence account sickness.

The Rule vests discretion in the Carrier but this does not authorize arbitrary action (Awards 195 and 3580). There must be some basis in fact for the determination made (Award 4517).

The "additional expense" must be actual or demonstrable expenditure as distinguished from a theory or assumption of eventual detriment (Award 1511) and the actual or demonstrable expenditure must be immediate, direct and proximate, and not speculative or remote (Awards 399, Interpretation No. 1 to Award 1524, 2649, 2981 and 5818).

On the Friday Claimant was absent, her position was filled by an employee from another office whose position was blanked that day. On the following Monday both returned to their usual duties. No overtime expense was incurred on either of these days in either office. The next day Carrier hired an extra employee in addition to the regular force and applied the payroll expense of this extra employee used that day to open time on the payroll resulting from the position blanked the prior Friday.

The essential question, therefore, is whether there is basis in fact for the Carrier's position that the expense of hiring the extra employee was the direct and proximate result of the failure of other employees to keep up the work of the blanked position without cost to the Carrier.

The relieving employee whose position was blanked was one in a pool of 12 Comptometer Operators. There is no factual evidence in this record showing what the nature or extent of their work load was on the Friday, Monday and Tuesday in question; what the normal tempo of their work performance was; or whether the 11 remaining Comptometer Operators on Friday and the 12 on Monday in fact kept up the work of the office during their regular hours or not. It does appear that the work load in the sick employee's office was subject to "peaks and valleys" and that Friday was a "peak".

The record abounds with assertions and denials about the Comptometer Operators' office; and the Carrier's position rests essentially upon theoretical conclusions rather than upon fact. Thus, it is said to be "so clear as to need no elucidation" that only 11/12s of the work was done because only 11/12s of the Comptometer Operators were at work on Friday; and it is said to be "obvious" that the work was not kept up because no one worked more than the regular hours and so on. The validity of these conclusions depends entirely upon the untenable and unsupported assumption that the day-to-day work load and the tempo of work performance in this office was constant.

We are unable to conclude that there is any basis in fact presented by this record to sustain a conclusion that the relieving employee's work was not kept up on Friday or Monday or that the expense of hiring the extra employee on Tuesday was an immediate direct and proximate result of Claimant's absence.

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 Rule 40 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.