

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**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) Carrier violated and continues to violate the rules of the Clerks' Agreement when it refused and continues to refuse to compensate all employees occupying positions coming within the scope of the Clerks' Agreement and/or their successors, Sacramento General Stores, at the rate of time and one-half for all time in excess of eight (8) hours, as established by time clock registration, on each date subsequent to November 20, 1950; and

(b) That Carrier shall be required to compensate all employees occupying positions coming within the scope of the Clerks' Agreement and/or their successors, Sacramento General Stores, at the rate of time and one-half for all time in excess of eight (8) hours as established by the time clock registrations on their respective time cards for each date subsequent to November 20, 1950.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines), (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, bearing effective date of October 1, 1940 (reprinted January 1, 1953, including revisions), which Agreement (hereinafter referred to as the Agreement) was in effect on the dates involved in this claim. A copy of the Agreement is on file with your honorable Board and by reference is hereby made a part of this dispute.

1. The Carrier maintains a Stores Department at Sacramento, California, which Department (hereinafter referred to as Sacramento General Stores) consists of several individual stores strategically located in accordance with service requirements in the Sacramento General Shops grounds, and was in operation during the time of this dispute. Approximately 400 of a total of over 500 employees occupying positions properly classified and rated under the Agreement assigned to perform service at said location were, in accordance with Carrier's Accounting Department instructions, required to punch their time cards at a time clock prior to commencing their tour of duty and subsequent to assigned quitting time. For this purpose Carrier

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim, if not dismissed, 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: Carrier's Stores Department operates a general store at Sacramento, California, which covers an area of approximately 230 acres. Several types of store operations are carried on at this point which require as many as 500 employees. Such employees are required to verify their attendance by means of time recording clocks. Prior to August 11, 1951, two such clocks were used. Thereafter, five additional clocks were installed. Ordinarily the clocks were located so that employees pass them on their way out of the area. Necessary work changes sometimes caused inconvenience. The record shows that time clocks had been used at this point for many years. It is the contention of the Organization that these employees should be paid in accordance with the time clock recordings and that overtime should be paid from the time employees completed their tour of duty until they clocked out.

The Organization relies primarily on Rules 9 and 20(a), current Agreement, which provide in part:

"Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

"Except as otherwise provided in these rules time in excess of eight (8) hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

We are in agreement with the Organization that all work performed in excess of eight hours on any day is to be paid for at the overtime rate. Awards 2346, 3214, 5414. The question before us is whether or not the time claimed as overtime is work (service, duties or operations) within the purview of the collective agreement.

We point out that these employees ordinarily punch the clock at the exit gate most convenient to them on their way home. The record indicates that more time is used in getting to the exit gate than is used in punching the clock. The claims filed indicate the total time needed from the time they were released from duty until they were clocked out over a 15 day period was from 21 to 39 minutes. In view of the distances to the exit gates, it is apparent that the time required to clock out was negligible. But this fact does not decide the claim. If it was overtime work it should be paid for however small it might be.

We do not think the claim has merit. The claim appears to be in the nature of a demand for portal to portal pay. While some industrial organizations have secured agreements for portal to portal pay, the railroad industry has never negotiated any such contract provisions. It has been a major issue in many industries in the negotiation of collective agreements. It is not a liability which can or should be imposed upon an industry by interpretation when the principle involved was never intended to be embodied in its collective agreements. It can be attained only by negotiation between the parties.

The Organization asserts that such a result was intended when the "Note" was included in Rule 9, current Agreement. The "Note" provides:

"The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees."

The "Note" came into being as a part of the Forty-Hour Work Week Agreement. It was not inserted as a new definition of the term "work." Its purpose was to explain that positions were to be determined by the number of days in a calendar week that service, duties and operations were necessary to be performed and that they no longer were governed by the assignments of employees, all of whom were to be regularly assigned to work five days per week. It was not the purpose or intent of the Forty-Hour Work Week Agreement to change the concept theretofore existing of what constituted work. No intention is evidenced that portal to portal pay was a concept to be incorporated into the Forty-Hour Work Week Agreement.

The question posed appears to be one of first impression before the Board. In our opinion, the time claimed is more similar to travel time which is paid for as work only when the controlling agreement specifically so provides. Awards 6400, 6651. Award 1802, Second Division, has some application. It was there held that inconvenience and delay resulting from the observation of employees after the close of their tour of duty for the purpose of preventing and reducing pilferage of company property was not work within the meaning of the agreement.

We conclude that time consumed in punching a time clock is a condition incidental to the employment and is not service, duties or operations within the meaning of the collective agreement in the instant case. No basis exists for an affirmative award.

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 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;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1955.