

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

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 Saturday, January 16, 1954, it utilized Clerk Richard Holtman, Recheck Clerk, seniority date, July 1, 1941, to work authorized overtime in the Interline Division, Auditor Freight Receipts, Group 7, to perform clerical work consisting of placing divisions on received interline abstracts, and failed and refused to utilize a senior available qualified clerk entitled to the work, Julius Kasselmann, whose seniority date is October 1, 1919;

2. Clerk Julius Kasselmann shall be reimbursed for wage loss sustained, eight hours at punitive rate of \$3.10 per hour, account Carrier's action in violation of the Agreement—Seniority rules and Overtime Rule 25 (b) of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Auditor Freight Receipts Office of the Missouri Pacific General Offices Accounting Department is one seniority district and roster of Class "A" and "B" employees and a Machine Operators' separate seniority district and roster as provided for in Rule 5, page 26 of the Clerks' Agreement and it consists of several sub-divisions, such as Recheck Division, Interline Division, Revising Division, Government Division, Transit Division, Local Division, Company Material Division, Statistical Division, Missouri-Illinois Division, Station Relief Claims (Adjustment Division), et cetera, and miscellaneous clerical positions not attaching to any specific sub-division.

There are approximately 290 employees in the Auditor Freight Receipts Office subject to the scope and operation of the Clerks' Agreement.

The Recheck Division located on the Sixth Floor of the Missouri Pacific General Office Building consists of a Supervisor and Assistant Supervisor, both subject to the provisions of the Clerks' Agreement (the Supervisor is restricted from the seniority rules of the Agreement) and approximately 42 Recheck Clerks, rate \$16.54 per day, and other clerical positions of miscellaneous classification, all of whom are subject to the provisions of the Clerks' Agreement.

OPINION OF BOARD: This claim is based upon Rule 25 (b) which governs the use of employees for overtime work and provides for the use of senior qualified employees performing work of certain nature or class. The Carrier used a junior employee of the same classification as claimant and Carrier's chief accounting officer explained the reason as follows:

"On the other hand, Clerks Holtman and Lodderhouse are the two employees of the Recheck Division that most recently had experience in the Interline Department on the particular work in question, and therefore, could be expected to be of considerable more value in the emergency than other clerks who had not recently been associated with the work to be done. That was the reason for their selection; * * *."

It is clear from that statement that the Carrier selected the most qualified employees instead of the senior qualified employees as required by the rule. Since there is no doubt on this record that claimant was qualified to do the work required and was senior to the employees used, it appears that the Carrier violated the applicable rule.

In accordance with our prior awards the claim will be sustained at 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 sustained at pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of July, 1955.