

Award No. 8311
Docket No. CL-8169

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the Clerks' current Agreement when it used a Group 3 employe, J. J. Throneberry, who held no Group 1 seniority, to fill the Check Clerk position of H. J. Skillen, Pine Bluff, Arkansas, Friday, June 8, 1951.

(2) That Check Clerk H. J. Skillen be reimbursed at penalty rate of pay for nine hours and fifteen minutes at Check Clerk rate of pay for Friday, June 8, 1951, and for all* subsequent dates until the violation is corrected.

*NOTE: Claims for subsequent dates to be developed by joint check of Carrier's payroll and other records.

EMPLOYES' STATEMENT OF FACTS: H. J. Skillen is a regularly assigned Check Clerk at the Transfer Shed, Pine Bluff, Arkansas, working from 12:00 Noon to 9:00 P. M., Sunday through Thursday, with Friday and Saturday rest days. He has no regularly assigned relief on Fridays and Saturdays.

The work at the Transfer Shed is a seven day operation, and prior to May 25, 1951, a relief position was established at the Transfer Shed with a combination of relief days including both Group 1 and Group 3 work, and on Friday and Saturday of each week this relief position relieved Check Clerk Skillen. After being in effect for some time the Carrier served notice on the regularly assigned occupant of the relief position and abolished the relief position as of May 25, 1951, and did not include the Friday and Saturday rest days of Check Clerk Skillen in any other relief assignment, but, instead, used regularly assigned Group 3 employes to work Check Clerk Skillen's position on Fridays and Saturdays.

On Friday, June 8, 1951, one of Check Clerk Skillen's assigned rest days, J. J. Throneberry, a regularly assigned Group 3 employe, assigned to work Thursday through Monday, with Tuesday and Wednesday as rest days, was

Award 5705 (Referee Wenke) denied claim that regularly assigned check clerks had right to be used on their rest days in preference to furloughed Group 1 clerks who were regularly assigned in Group 3, it being stated:

"When Ramsey, Melton and Yeager were properly called to do this unassigned work they did so as unassigned employees in Class 1 and subject to the working conditions of that class of employees." It further stated:

"Within these rules Ramsey, Melton and Yeager were unassigned employees who did not otherwise have forty hours of work that week."

If the claimant had been permitted to work on his rest days, the result would have been to deprive the Group 3 employe of extra work in the higher groups; to deprive the extra Group 3 employe of work in Group 3; and require that the carrier pay a penalty because of the regularly assigned employe working on his rest day.

Nothing in the rules indicates that any such result was contemplated.

IV

Conclusion

It is evident from the rules and their application in the past that there is no basis for the claim.

The Carrier respectfully submits that the facts in evidence show that Rule 11 and the "note" under Rule 3 are applicable under the circumstances here involved. The parties have set up reasonable, practicable rules to cover extra work. Such rules are designed to channel the extra work to the furloughed and extra employees with a minimum use of the regular employe out of his assignment, and carry out the principle of the Forty Hour Week. They have been the basis on which extra work under Rule 32-8 has been handled since September 1, 1949, or more than six years.

Without prejudice to its position, as previously set forth herein, that the claim is entirely without support under the rules, the Carrier submits that the claim that claimant should receive an allowance at time and one-half rate for work not performed is contrary to the well established principle consistently recognized and adhered to by the Board that the right to work is not equivalent to work performed under the overtime and call rules of an agreement. Please see Awards 4244, 4645, 5195, 5437 and 5764. There are many others also.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees is entirely without merit or support under the rules and should be denied in its entirety.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: This case presents essentially the same issue as Award No. 8303 and is governed by the Opinion therein. The comments there made with reference to Award No. 1 of Special Board of Adjustment No. 169 are equally applicable to Award No. 2 of that Board, cited by Carrier in this case. The claim is therefore sustained at pro rata, not penalty, rate except for the period from June 24, 1952, the date of the final declination on the property, until September 23, 1955, the date of Petitioner's notice of intention to file with the Board, for which period no compensation shall be paid.

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 the Agreement was violated.

AWARD

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1958.