

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the rules of the Clerks' Agreement on June 7, 1954, and on various other subsequent dates, when it improperly compensated furloughed employees in the Perishable Freight Department at Portola, California for services performed.

(b) That Messrs. Carl Andreozzi, Leon Hansen and other furloughed clerks adversely affected, should now be additionally compensated for the difference between what they were allowed and what they should have been allowed in accordance with the rules of the Clerks' Agreement, and continuing as long as this violation exists.

NOTE: The names of the employees and the amount to which they are entitled can be readily determined by a check of the Carrier's time sheets and payrolls.

EMPLOYEES' STATEMENT OF FACTS: During the period involved in this claim, the Carrier has maintained three shifts working around the clock in the Perishable Freight Department at Portola, California, for the purpose of servicing perishable freight, including icing of cars and handling of vents. The regular starting time for these three shifts have been 7:59 A. M., 3:59 P. M. and 11:59 P. M.

During the year 1954, furloughed employees worked on numerous occasions on which their shift either began or ended between midnight and 6:00 A. M., and the following is a partial list of such instances:

Date	Hours Worked
June 7	12:15 A. M. to 8:15 A. M.
June 25	1:29 A. M. to 9:29 A. M.

not applicable to furloughed employees called out for the performance of extra work.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for additional compensation by furloughed employees called in to perform extra work, when the eight hour assignment of such employees was started or ended after 12:00 midnight or before 6:00 A. M. The Carrier asserts that the rule against starting after 12:00 midnight or before 6:00 A. M. has no application to furloughed employees called in for extra work and therefore the Claim should be denied. The Organization contends that the rule is controlling and applicable to furloughed employees called in for extra work. The Claimants were paid at the pro rata rate for the work performed and now seek additional compensation for the hours worked because of the alleged breach by the Carrier.

On the basis of the evidence in this record we conclude that the prohibition contained in Rule 16 does not apply to furloughed employees called in to do extra work. It undoubtedly does apply to employees regularly assigned. It seems to us that extra employees have no assigned starting time, except when they fill the position of a regularly assigned employee which they were not doing at the time of the work which caused this claim. We think the reasoning in our Award 7314 is properly applicable to the facts in the instant case. It seems to us in this case that Rule 16 must be considered in conjunction with the entire section dealing with starting time, and when the rule is related to the description which precedes it we conclude that it applies to regularly assigned employee, and not to furloughed employees doing intermittent and casual extra work. The claim will be denied.

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 Employee 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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1960.