

Award No. 9946

Docket No. CL-9235

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin J. Rose, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Ogden Union Railway and Depot Company violated the existing agreement when

(a) 1. On Saturday, June 4, 1955, it used extra employees H. Fraga, B. S. Payne, M. J. Winn, J. D. Ricketts, C. Huerta, R. Vanderwood, L. G. Jensen, L. W. Jensen, and L. P. Lebar, as Caller-Stowers 8 A. M. to 5:50 P. M. (1 hour lunch), a total of 8 hours and 50 minutes on date in question, in excess of 40 hours in that work week, and

2. On Sunday, June 5, 1955, it used extra employees H. Fraga, B. S. Payne, M. J. Winn, Q. Beckstead, J. D. Ricketts, C. Huerta, R. Vanderwood, L. G. Jensen, L. W. Jensen and J. P. Lebar, as Caller-Stower 8 A. M. to 5 P. M. (1 hour lunch), on date in question, in excess of 40 hours in that work week.

(b) 1. That regular employees S. J. Smith, Floyd Stanger, C. B. Suttlemyre, Arvis Paschall and Merrill Youngberg to be paid 8 hours 50 minutes at rate and one-half at Caller-Stower rate for this mishandling on June 4th, and

2. That regular employees S. J. Smith, Floyd Stanger, L. H. Phipps, C. B. Suttlemyre, Christian Kapp, Arvis Paschal and Merrill Youngberg be paid 8 hours at rate and one-half at Caller-Stower rate for this mishandling on June 5, 1955.

EMPLOYEES' STATEMENT OF FACTS: Beginning on approximately May 19, 1955 and extending to June 20, 1955 the Teamsters' or Truck Drivers' Union (International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America) of the Nor-Utah region, who operate intra-city and inter-city freight trucking service were on strike. (See acknowledgement in Employees' Exhibit No. 5.)

As a result of the strike in this area rail carriers were required to handle the peak-load of business resulting from the stoppage of certain over-the-highway freight truck carriers. To meet this demand, which the Superintendent

may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe." (Emphasis ours)

This rule, like Rule 11, required that the occupants of the 14 regular positions be used when work developed on Saturday and Sunday, June 4 and 5, that was not a part of any regular assignment.

Under the facts and circumstances prevailing, it is the Carrier's position that the agreement did not require that the claimants be used on caller-stower positions while absent on their rest days from positions to which they were assigned.

In summary, it is the Carrier's position that:

1. If the Organization's submission was received by the Board after November 19, 1956 the claim is barred by Section 1(c) of the Time Limit Rule and it should be denied on that count alone.

2. If the Organization's submission was received before November 19, 1956 it should be denied because it is without support under the provisions of the effective agreement.

All information and data contained in this Response to Notice of Ex Parte Submission is a matter of record or is known by the Organization.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute stems from the substantial increase in the Carrier's LCL shipments caused by a strike in the trucking industry during May, 1955. Because it appeared by June 1, 1955, that this increased business would continue indefinitely, fourteen additional regular caller-stower positions were established on June 2 and the fourteen senior employes on the extra board maintained by the Carrier were assigned to them pending permanent assignment to the senior applicants. Since all of the regular assigned freight house employes were being used, the occupants of those positions were worked on Saturday, June 4 and Sunday, June 5.

Claimants, an Assistant Foreman and six Industry Clerks, who are regularly assigned to work in train yards and at industries away from the freight platform, claim that they should have been used for this overtime work, and the Employes cite Rules 5(d), 11, 55 and 56 of the applicable Agreements and Article 5 of the Freight Handler's Extra Board Agreement to support the claim.

The Carrier's time limit plea is denied. The docket shows that the Employe's "intention to file ex parte submission" with the Division was timely and it was sufficient. Award 9203.

The claim is without merit.

Rule 5(d) is the "Work on Unassigned Days" rule. This Division has held that "the regular employe" under the unassigned day rule is the employe who normally performs the work as part of his regular assignment. See Awards 5465, 5843, 6523, 9439. Since the Claimants were not assigned to the same class of work as caller-stowers, none of them can be considered as "the regular employe" within the meaning of Rule 5(d).

Rule 11 is not applicable. The disputed work was not "overtime before and after assigned hours" and the Claimants were not "employees regularly assigned to class of work for which overtime" was necessary.

Article 5 of the Extra Board Agreement was not violated. The facts established that the employees who performed the disputed work were not then on the extra board because they were "taken off the board" since they were "Employees temporarily assigned to a 'hold-down' . . . or on a temporary position that is known to be of one (1) week or more duration," as provided in the Article mentioned.

Rule 55 relates to "Bulletining Positions" and Rule 56 concerns "Filling Positions Pending Assignments." Neither of these rules applies to the disputed overtime work.

The Employees also rely on the fact that the Carrier paid a similar claim by these Claimants for May 28 and 29, 1955. This fact is insufficient to modify or change the plain meaning of the rules in the circumstances presented here.

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, 1943;

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 26th day of May, 1961.