

Award No. 10519

Docket No. CL-10288

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO GREAT WESTERN RAILWAY COMPANY**

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

(1) That the Carrier violated the agreement between the Brotherhood and the Carrier effective August 15, 1939, reprinted May 1, 1955, when beginning on or about September 16, 1956 it required eleven (11)-hour days with regularity on two (2) positions at State Street Yard, St. Paul, Minnesota, permitting two yard clerks to perform three (3) hours each day on an overtime basis, thereby bringing about discrimination whereby the earnings of these two employees were enhanced to the detriment of other yard clerks who were qualified to perform such service; and

(2) That the Carrier shall now be required to compensate F. W. Schuldt, James Coburn, A. C. Molean, H. Kadel, J. W. Downey, H. G. Roeller, Wm. J. Van Kleek and K. A. Carlson and/or their successors, Yard Clerks at State Street Yard, St. Paul, Minnesota, for three (3) hours each at the rate of time and one-half, for each day beginning with September 16, 1956, account their being unjustly treated and discriminated against.

EMPLOYEES' STATEMENT OF FACTS: At the State Street Yard Office, St. Paul, Minnesota, one employe, G. J. Truhler, Yard Clerk, incumbent of position with tour of duty 4 P. M. to 12 Midnight, is worked overtime on an average of three (3) hours every day; and another employe, J. M. Kramer, Yard Clerk, with tour of duty 7 A. M. to 3 P. M., is called out to perform service with regularity approximately three (3) hours in advance of the regular starting time of his position.

The agreement effective between the parties provides in Rule 27 thereof a basic day of eight (8) hours — not eleven (11); it further provides for the payment of time and one-half for service performed in excess of eight (8) hours; such provision does not contemplate an 11-hour day. Further, Rule 24, Section 2, provides that employees will have the right of appeal if they consider themselves unjustly treated.

for services performed in excess of eight (8) hours but such provision does not contemplate an 11 hour day. This practice is a direct violation of our agreement and brings about discrimination in that the earnings of two employees are enhanced to the detriment of others."

Check of Third Division Awards fails to develop any cases wherein this Board has ever been called on to decide whether or not it was a violation of the agreement to work a clerk three hours overtime. However, the First Division, in dealing with a rule (Y-C-1) reading:

"* * * all time worked in excess of eight hours' continuous service in a twenty-four hour period shall be paid for as overtime on the minute basis, at an hourly rate of three-sixteenths of the daily rate."

in Award 13778 held:

"Consequently claimants must be held to have remained on continuous service ending when relieved from duty, four hours and twenty-five minutes after the customary relief time. Rule Y-C-1 alone, governs and compensation was properly allowed thereunder. See the following Awards, among others to same effect: Awards 1036, 1297, 3475, 5080, 6504, 8419, 10909 and 10952."

In dealing with claims which are without rule support this Division in Award 5331 held:

"Except insofar as it has restricted itself by the Collective Agreement or it may be limited by law, the assignment of work necessary to its operation lies within the Carrier's discretion."

Under the Railway Labor Act, this Division is required to give effect to the collective agreement as written and adjudicate this dispute in accordance therewith. In the handling of claim on the property the Employees failed to furnish any proof in support thereof. In the matter of proof this Division has held:

"The burden of establishing facts to require or permit the allowance of a claim is upon him who seeks its allowance." Award 4011 — (also, see Awards 6829, 6828, 6824, 4758, 3523, 3477, 2577 and others.)

Carrier affirms all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

OPINION OF BOARD: In studying the record before us, we are unable to find support for Employees' Claim.

No showing has been made by Petitioners that Rule 24, Section 2, and Rule 27, Section 1(a) — or either of these contractual clauses — of the applicable Agreement of the Parties, were violated.

Rule 24 (2) provides for a hearing and an appeal on behalf of an employee who considers himself unjustly treated; however, there is nothing in the record showing that a request was made for such a hearing, or that one was held.

Rule 27, Section 1(a) was not violated under the confronting circumstances, for it does not give preference to any particular employee to overtime work.

It is not necessary to resolve various procedural issues presented in behalf of Carrier (and we do not attempt to do so herein), for this Claim fails on the merits — as above indicated.

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 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 13th day of April 1962.