

Award No. 11655

Docket No. CL-11724

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**RAILROAD DIVISION,
TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
DONORA SOUTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim or Grievance of Employee:

That it is a violation of the agreement to have the Storekeeper suspend his work to perform the work of another clerk so that the work of this clerk would not be done on the overtime basis.

This is a direct violation of Rules 1, 5, 6, and 21 of the Clerks' Agreement.

That since the agreement was violated that Mr. Vitali be paid as asked for in his original claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. Allan Farquhar on the dates in question held a Storekeeper's job. On these same dates, Mr. Thomas Vitali was holding down a vacation vacancy.

Mr. Thomas Vitali's regular position was that of a Stenographer-Clerk. Instead of letting Mr. Vitali perform the work of this position on the overtime basis, the Carrier elected to have Mr. Farquhar, Storekeeper, suspend doing his work part of the day and perform the work of Mr. Vitali.

The vacancy caused by Mr. Vitali taking the vacation vacancy was for more than ten (10) days and should have been advertised.

The Railroad Division, Transport Workers Union of America, AFL-CIO, has a bargaining agreement effective July 16, 1953, and revised October 1, 1957, with the Donora Southern Railroad Company covering the Clerical, Office, Station and Storehouse Employees, copy of which is on file with the Board and is by reference hereto made a part of this Statement of Facts.

POSITION OF EMPLOYEES: That the position of Storekeeper does not come under the scope of this agreement, as it is a supervisor's or managerial position. That when the Storekeeper was used to do the work of a Stenog-

OPINION OF BOARD: Claimant held a position described as follows:

"Description of Position:

"Taking shorthand and transcribing same; general clerical duties as may be assigned; Crew Caller relief; help in Storeroom when necessary and fill vacancies however created, i.e., vacations, sickness, etc. of Crew Callers and Storekeeper, and whatever other duties as may be assigned."

On the dates noted in the claim, Claimant was filling a vacation vacancy of a Crew Caller's position. During that time the Storekeeper, who is also covered by the same Agreement, performed some of the clerical work in the Mechanical Department. The Storekeeper did not perform this work regularly every day, nor for the same number of hours on the days when he did this work.

Petitioner contends (1) that Carrier was obliged to advertise Claimant's position as required by Rule 21 (a) because the position was vacant for more than ten calendar days, (2) that the Storekeeper was required and permitted to suspend his work in violation of Rule 5 and (3) that Claimant was entitled to the clerical work performed by the Storekeeper at the overtime rate as provided in Rule 6.

Claimant's position was not vacant. The filling of the vacancy was part of his duties in accordance with the description of his position. No advertising was required under Rule 21 (a).

Rule 5 reads as follows:

"RULE 5

"Absorbing Overtime.

"Employees shall not be required or permitted to suspend work during regular hours to absorb overtime."

There is nothing in the record to show that work was suspended on either the Storekeeper or Claimant's positions. Petitioner has the burden of proving that work was suspended for the purpose of absorbing overtime. This it has failed to do. On the contrary, the record shows that both Claimant and the Storekeeper worked their respective positions during that time.

Since work was not suspended, there is no violation of Rule 6 and Claimant was not entitled an assignment at the overtime rate.

In a letter dated December 3, 1958, Carrier made a compromise offer which was rejected by the Petitioner. That letter said that the offer "shall not be considered as establishing any precedent for future similar claims." It further said: "If the offer is declined, this claim is denied."

It is a well established principle of this Division that such an offer and a subsequent rejection has no bearing on the merits of the claim.

For the reasons herein stated we are required to find that there is no merit to the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1963.