

Award No. 11665
Docket No. CL-11652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Board of Adjustment:

1. That Carrier violated rules of the parties' agreement in denying Messrs. D. B. Maney and L. B. Gibbs, Chief Clerks to Superintendent, Denison, Texas, overtime payment for time worked beyond their assigned days and hours, Monday through Friday, each week, 8:00 A. M. to 5:00 P. M.:

OVERTIME EARNED BY D. B. MANEY, RATE \$572.56 per month:

DATE	TIME WORKED	TIME CLAIMED	HOURLY RATE	AMOUNT DUE
Saturday, February 14, 1959	3 hrs. 50 mins.	3 hrs. 50 mins.	\$4.93½	\$18.92
Sunday, February 15, 1959	2 hrs. 25 mins.	8 hrs. 00 mins.	4.93½	39.48
Saturday, February 28, 1959	3 hrs. 20 mins.	3 hrs. 20 mins.	4.93½	16.45
Sunday, March 1, 1959	3 hrs. 15 mins.	8 hrs. 00 mins.	4.93½	39.48
Saturday, March 7, 1959	3 hrs. 30 mins.	3 hrs. 30 mins.	4.93½	17.27
Sunday, March 8, 1959	2 hrs. 30 mins.	8 hrs. 00 mins.	4.93½	39.48
Saturday, March 14, 1959	4 hrs. 00 mins.	4 hrs. 00 mins.	4.93½	19.74
Sunday, March 15, 1959	3 hrs. 00 mins.	8 hrs. 00 mins.	4.93½	39.48

OVERTIME EARNED BY L. B. GIBBS, RATE \$572.56 per month:

Saturday, February 21, 1959	7 hrs. 40 mins.	7 hrs. 40 mins.	4.93½	37.83
Sunday, February 22, 1959	3 hrs. 35 mins.	8 hrs. 00 mins.	4.93½	39.48
Holiday, February 23, 1959	8 hrs. 00 mins.	8 hrs. 00 mins.	4.93½	39.48

2. That the Carrier now be directed to pay compensation due Messrs. D. B. Maney and L. B. Gibbs, Chief Clerks to Superintendent, Denison, Texas, for the above mentioned dates, and all subsequent Saturdays, Sundays and Holidays.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains two positions entitled Chief Clerk in the Office of District Superintendent at Denison, Texas. The monthly rate of pay, established by agreement of the parties, for

"We recognize that we are without authority to amend present rules or write new ones into the agreement. It is our opinion that a sustaining award here would write exceptions to the rules which would amount to more than an interpretation of existing rules."

In Awards Nos. 1288 and 1289, the Fourth Division, with Referee Merri-field, held:

"The principle is well settled that this Board is without authority to add to the existing contract. See Fourth Division Awards 105, 242, and 989."

Award 1225 of the Fourth Division, with Referee Coburn:

"It is well established that the Board is limited to an interpretation of the terms and conditions of the applicable agreement and that so long as its provisions are clear and explicit we may not vary or modify them by implication . . ."

Award 938 of the Fourth Division, with Referee Carey:

"To apply the meaning claimed by petitioner would be equivalent to revising the Agreement to provide that seniority is to be the controlling test in all cases. That this Board lacks that authority is not open to question."

Carrier therefore respectfully requests that the Third Division decline to be a party to this obvious attempt on the part of the Employees and Organization to secure a revision of Paragraph (e) of Section II, Addendum No. 1 to the controlling Agreement, by completely rejecting and denying these alleged claims.

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: This Board holds that receipt of the Employee's "notice of intention" of filing of its ex parte submission, when received within the specified time, is compliance with the National Agreement of August 21, 1954; and, therefore, Carrier's plea to bar the claim is denied. See Third Division Awards 7850, 8422, and 8670.

Both parties agree that the issue presented herein is dependent on interpretation of Section II, Paragraph (e) of the Agreement:

"(e) For positions on monthly rate covered by this Section II of Addendum No. 1, the agreed monthly rate shall compensate for all service rendered, except that on such positions, when used beyond the normal assignment on regular routine clerical work that is of a nature incidental to keeping records and accounts, overtime shall be allowed under overtime rules of the agreement, for such work. For the express purpose of arriving at the rate for the payment of overtime under this Section II of Addendum No. 1, the hourly rate shall be determined by dividing the monthly rate by 169.33."

The essential facts are as follows: Carrier consolidated its Waco and Parsons superintendent offices with that of the Denison office. After consolidation the two chief clerks worked Saturdays, Sundays, and holidays for which they were not compensated.

Carrier supports its position by maintaining that the work performed by the senior clerks was incidental to their own duties and not a substitute for hiring other clerical help, that they were not given any authority to perform the work on an overtime basis, and that the claim for overtime work was not filed within the proper time. Carrier further argues that the Claimants are bound by an earlier interpretation set down in a personal memorandum by a prior General Chairman; and, therefore, employees are not entitled to overtime compensation.

Claimant contends that the work was clerical and was performed in addition to the normal duties of the senior clerks. Employee asserts that the Carrier did not deny the facts of the claim when handled on the property and acknowledged that the issue concerned the interpretation of Section II, Paragraph (e) of the Agreement; but now employee claims that Carrier shifted its position in its presentation to the Board to include additional technical defenses and issues not raised heretofore.

We are of the opinion that this dispute must be restricted to the issue of the interpretation of Section II, Paragraph (e), as related to the facts in the record. Other questions raised by Carrier such as the time for presentation of the overtime claim and the pertinence of the personal memorandum of a General Chairman are rejected for consideration by this Board because they were not presented previously on the property level of handling this dispute.

It is a reasonable and logical conclusion that combining of the two offices created additional work which could not be handled along with the regular clerical duties and called for work on Saturdays, Sundays, and holidays. Those tasks of putting the office into functioning order were not of a supervisory nature. The Agreement of the parties, as set forth in Section II, Paragraph (e), clearly covers the conditions of this case; and, hence, the senior clerks are entitled to overtime compensation.

We, therefore, hold that the Carrier violated the Agreement of the parties.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1963.

DISSENT TO AWARD 11665, DOCKET CL-11652

Award 11665 is in error; first, because it is based on conjecture and surmise of the very issue in the case, viz., whether the Saturday and Sunday work claimed in behalf of the two chief clerks was "routine clerical work" as specified in Section II, paragraph (e), or was work incidental to their positions as chief clerks; secondly, because it ignores the burden of proof on the Organization to submit proof of the time claimed, and that it was performed at the direction of the Carrier, which burden the Organization failed to meet.

The Award further errs in its holding that the interpretation of Section II, paragraph (e) furnished by the Carrier by former General Chairman Pickett in 1949, who negotiated the rule in dispute, was not supplied the Organization during the handling on the property. The record shows otherwise, and the interpretation of the Agreement by the former General Chairman fully accords with the Carrier's position in this case and is binding on the Petitioner here. This fact is further established by the record in that the Organization unsuccessfully served a Section 6 Notice to amend the contract to accomplish the very result now improperly furnished by this Award.

For these reasons, we dissent.

/s/ D. S. Dugan

/s/ P. C. Carter

/s/ W. H. Castle

/s/ T. F. Strunck

/s/ G. C. White