

Award No. 13226

Docket No. CL-13265

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5159) that:

1. Carrier violated the Clerk's Agreement when on Saturday, June 17, 1961, it utilized Clerk George Godfrey, seniority date April 1, 1919 (AD), Supervisor Labor and Material Department, position No. 1094, to work authorized overtime in the Labor and Material Department of the Office of Auditor Disbursements, in the performance of the clerical work of preparing journal vouchers from regular labor distribution of Kansas City Terminal, Kansas Division and Central Division; Train and Enginemen's labor distribution from Omaha Division, Kansas Division and Central Division; and material distribution from Kansas City Terminal, Omaha Division and Central Division, and failed and refused to utilize the incumbent of the authorized overtime work, senior qualified Clerk Miss Clara Hartman, seniority date December 5, 1917 (AD) whose regular assignment was Assistant Labor and Material Clerk, position No. 1039.

2. Clerk Clara Hartman shall be reimbursed for wage loss sustained, eight hours at the punitive rate of \$3.9075 per hour, amount \$31.26, for June 17, 1961, account Carrier's action in violation of seniority rules and Overtime Rule 25 (b) of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Auditor Disbursements Office of the Missouri Pacific General Accounting Offices is a part of the General Accounting Offices Consolidated Seniority District, and other offices in that seniority district are Auditor Freight Traffic, Auditor Passenger Traffic, Auditor Station Accounts, Car Accountant and Data Processing Center.

In the Auditor Disbursements Office there was, among other sub-departments, on the date of claim the Labor and Material Department, which is the department of that office here involved.

The force consist of that department, according to the Employees' records, was as follows:

was not entitled to the overtime on Saturday, June 17, 1961, based on incumbency rights.

Carrier has shown in the foregoing that:

1. Work performed by Supervisor Godfrey was regularly assigned to his position as supervisor and was not restricted to labor and material distributions.
2. Godfrey had sole incumbency rights to the work as Supervisor and was properly used on claim date under the provisions of Rule 25 (b) of the Clerks' Agreement.
3. In failing to use Mr. Godfrey the Carrier would have been subject to claim.

Without prejudice to the position set forth in the preceding paragraphs, the Carrier hereby enters protest against time and one-half payment being made in any eventuality in the disposition of this case. The basis for this protest is found in Awards 7203, 7190, 7188, 7138 and 7105 and others going back so many years that the principle of denial of punitive pay for work not done is so well established there is no need to cite a long list of awards of such import.

In view of the foregoing, there has been no violation as alleged. The claim is not supported by the provisions of the Clerks' Agreement and the Carrier respectfully requests that it be denied.

OPINION OF BOARD: The Claimant in this case alleges a violation of both the seniority rules and the overtime rule of the Agreement. It is her contention that overtime work performed on Saturday, June 17, 1961 by Clerk, George Godfrey, her supervisor, was work which she performed regularly on her assignment as Assistant Labor and Material Clerk, tour of duty being from Monday to Friday inclusive with rest days of Saturday and Sunday. She maintains that this work consisted of preparing journal vouchers from regular labor distribution of Kansas City Terminal, Kansas Division and Central Division; Train and Engineman's labor distribution from Omaha Division, Kansas Division and Central Division; and material distribution from Kansas City Terminal, Omaha Division and Central Division. She further alleges that this work was regularly assigned to her position and was not regularly performed by the Supervisor; that he prepares only the journal vouchers from the Gulf District distributions. The Supervisor, to whom this work was assigned, was junior to her in date of service. She bases her case on the following rules:

Seniority—Rule 3, Section (a), first paragraph, provides:

"Seniority of an employe, other than laborer, shall date from the date and time he begins compensated service in the district where employed, except that in the Accounting Machine Bureau an unassigned employe used to fill a temporary vacancy in other than his home department does not establish seniority rights by reason of such service."

Overtime and Calls—Rule 25, Section (b) provides in part:

"(b) No overtime will be worked without authority of superior officer except in case of emergency when advance authority is not obtainable.

To avoid discrimination as between employes to be used on

authorized overtime work, the incumbents of positions which require overtime hours will be used if possible.

In the application of Rule 25 (b) in the Law (Freight Claim) and Accounting Departments, General Offices, St. Louis, the following shall apply:

In working overtime before or after assigned hours, employees regularly assigned will be utilized; that is, when it is necessary to work employees overtime on the work which is that constituting the regular assigned duties of their positions during regular hours, the incumbents of such positions will have prior rights to the overtime work. Where overtime required involves work of more or less than the number of employees regularly assigned or utilized, senior qualified employees regularly employed on the class or classes of work to be performed will be utilized."

We have no quarrel with the above cited rules, nor their application in a given factual situation. However, there is a basic disagreement of fact involved in this case. The Claimant alleges that it is her duty to prepare vouchers etc., whereas the Carrier alleges that this work is also part of the responsibility of Supervisor Godfrey, to whom the work was given. Job descriptions and bulletins have been introduced into evidence by both opposing factions. They do little to enlighten us as to the fundamental question posed. The Supervisor's job description lists as one of his duties the compiling of miscellaneous journal vouchers. The Claimants' job description lists as one of her duties the preparation of journal vouchers. There is no stringent line of demarcation as to which employee prepares vouchers from the Western District, involved in this case, or the Gulf District or any other district for that matter. The evidence presented is conflicting and contradictory. In view of this, we find ourselves unable to resolve this most essential question of fact, and accordingly will neither sustain nor deny the claim, but will dismiss it.

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 claim must be dismissed for lack of evidence.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1965.