

Award No. 13894
Docket No. CL-13883

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5279) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when on August 20, 1960, it failed to call and use Mr. R. K. May for an extra Waybill Clerk position but, instead, called and used junior employee T. W. O'Connell therefore; and

(b) Carrier shall now be required to allow Mr. R. K. May eight (8) hours' additional compensation at the pro rata rate of Waybill Clerk.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. Carrier established an extra Waybill Clerk position, assigned hours, 11:00 P. M., to 7:00 A. M., Eugene, Oregon, for August 20, 1960. No qualified unassigned employees were available to be called thereto; therefore, Carrier proceeded to fill the position with a regularly assigned employee. A Carrier representative placed a telephone call to the home of Mr. R. K. May (hereinafter referred to as the Claimant) at 8:00 P. M., on May 20th, and, receiving no response, proceeded to call employees junior to Claimant. Employee T. W. O'Connell was contacted and filled the position.

2. Claimant filed a time card claim for eight (8) hours' compensation, asserting that he was home at 8:30 P. M., and if Carrier had adhered to the past practice of attempting to reach the proper employee up to within one and one-half hours of the starting time of the position to be filled, he would have been available therefore.

By letter dated August 22, 1961 (Carrier's Exhibit E), Carrier's Assistant Manager of Personnel denied the claim stating "... the reason the Claimant was not called was because he could not be reached on his residence telephone. . . ."

POSITION OF CARRIER: The sole issue to be resolved in this case is whether, when failing to reach Claimant by telephone at 8:00 P. M. on date of claim to give him a call for service with on-duty time of 11:00 P. M., Carrier properly called and used a junior clerical employee at the point involved. It is Carrier's position that such action was entirely proper and the only reason Claimant was not used for the work claimed was that he was not available when called. There is no Agreement in existence between the parties to this dispute which specifies time limits within which employees will be called for service of the nature involved in this case.

Carrier maintains it met its obligation when it attempted to call the Claimant who was admittedly not at home when the call was placed at 8:00 P. M. for the extra work which would develop at 11:00 P. M. on date involved, and, lacking any agreement provisions or understanding that a time element must be set for calling employees for vacancies or extra work that the Carrier was not restricted from immediately calling the next available employee for the extra work when the Claimant failed to answer his residence telephone.

Petitioner's General Chairman contends an employee junior to the Claimant was called and used "... contrary to various Rules of the current agreement," and Carrier presumes he is referring to rules mentioned in Division Chairman's letter of November 30, 1960 — see Carrier's Exhibit A — which were Rule 26 (Seniority Datum), Rule 27 (Promotion Basis), Rule 28 (Assignments and Displacements), and Rule 34 (Short Vacancies), all of which are irrelevant and do not support Petitioner's General Chairman's contention that "... Carrier did not satisfy the normal requirements of obtaining his services by a single phone call at 8:00 P. M., August 30, 1960"; of course, such contention is wrong as there is no agreement or understanding on this property that provides for a time limit for calling employees.

In the claim in this docket the Carrier fulfilled its obligation to the Claimant when it made an honest and sincere effort to call the Claimant three hours in advance of time he would be required for the extra work and the fact that he did not arrive home until thirty minutes after the call was placed did not restrict the Carrier from calling the next available employee for the extra work, which was done shortly after Claimant failed to answer his telephone at 8:00 P. M., and since no provisions of the current agreement sets a time for which a call of this nature be placed in advance of time employee is required to report, Carrier was not obligated to stand by to make repeated efforts to reach Claimant with no assurance or reason to believe that he would be available before the on-duty time for involved work.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: As of Saturday, August 20, 1960, one regular Waybill Clerk was employed on the 3:00 P. M. and 11:00 P. M. shifts respec-

tively in Carrier's agency at Eugene, Oregon. Because the waybilling was greater in volume than one Waybill Clerk could handle without delay to trains for which the waybills were intended, an extra position of Waybill Clerk was used on the 3:00 P. M. shift on the subject Saturday But at 8:00 P. M., with billing still running in arrears, it was determined that an extra position of Waybill Clerk also would be required on the 11:00 P. M. shift. Since no qualified unassigned employees were available, it was necessary to fill the extra position by calling the senior regularly assigned employee who was available on his rest day, without overlap of hours on his assigned shift. The most senior employee was Claimant R. K. May, who was regularly assigned to a position as Accountant, Monday through Friday, 8:00 A. M. to 4:30 P. M.

Accordingly, at 8:00 P. M. on the subject Saturday attempt was made to call Claimant May on his residence telephone but there was no response. Attempt was then immediately made to call the next regularly assigned employees in order of their seniority — W. L. Groner and T. W. O'Connell respectively. Groner did not answer his telephone but O'Connell was contacted and accepted the 11:00 P. M. call for extra work. Claimant May subsequently filed a time card claim for 8 hours' compensation, asserting he was home at 8:30 P. M. on the subject Saturday, and contending that if Carrier had adhered to the past practice of attempting to reach the proper employee up to within one and one-half hours of the starting time of the position to be filled, he would have been available therefore.

There is no Agreement Rule which specifies a time limit for calling employees for service. The Organization nevertheless has contended, both on the property and before the Board, that for many years it has been the practice at Eugene Yard to call clerks one and one-half hours before the service is to begin, to the extent practical. Prior to the claim being appealed to the Board the Petitioner supplied the Carrier with letters to this effect from three clerical employees at Eugene, at least two of whom had served for various periods as Assistant Chief Yard Clerk and/or Chief Yard Clerk at this location. The Carrier denies the claimed practice has existed and asserts the subject letters are too general in nature to be given any weight. But the Carrier has presented no evidence in rebuttal of the evidence contained in the subject letters. Thus, while we are confronted with opposing contentions on the matter of practice, we do not have any conflict in the evidence as to the existence of such practice.

We therefore must conclude there has been a consistent past practice of many years standing whereunder, to the extent practical, employees have been given a call one and one-half hours prior to the commencement of the service for which called. We further conclude that this practice is enforceable under the Agreement. In the subject instance no showing has been made that it was impractical to wait until 9:30 P. M. (one and one-half hours prior to the beginning of the involved extra work) to call Claimant May, at which time he was home and available. A sustaining award is warranted.

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1965.