

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5458) that:

(1) Carrier violated the Clerks' current Agreement at Mount Pleasant, Texas, when it failed to use the proper employe for filling vacancies on September 1, 8 and 15, 1962.

(2) Mr. M. W. Smith be compensated at the overtime rate of pay for eight hours on each of the dates of September 1, 8 and 15, 1962.

EMPLOYES' STATEMENT OF FACTS: The facts in this claim, as we understand them to be, are that there are only four regular assigned clerical positions at Mount Pleasant performing clerical work. They are:

Chief Yard Clerk — 8:00 A. M. to 4:00 P. M., Monday through Friday, Saturday and Sunday rest days.

Chief Yard Clerk — 4:00 P. M. to 12:00 MN, Tuesday through Saturday, Sunday and Monday rest days.

Chief Yard Clerk — 12:00 MN to 8:00 A. M., Thursday through Monday — Tuesday and Wednesday rest days.

Relief Clerk — Sat., Sun.	Chief Yard Clerk	8:00 A. M.— 4:00 P. M.
Monday	Chief Yard Clerk	4:00 P. M.—12:00 MN
Tues.-Wed.	Chief Yard Clerk	12:00 MN - 8:00 A. M.
Thurs.-Fri.	Rest Days	

Prior to September 1, 1962, Mr. Carl Rhone, whose Group 1 seniority dates from May 8, 1917, was regularly assigned to the 8:00 A. M. to 4:00 P. M. position; Mr. M. W. Smith, whose Group 1 seniority dates from September 9, 1936, was regularly assigned to the 4:00 P. M. to 12:00 MN position; Mr. D. F. Presley, whose Group 1 seniority dates from July 20,

Mt. Pleasant, October, 1962, First Period

NAME	ASSIGNED HOURS	M	T	W	T	ASSIGNED HOURS	F	Sa	Su	M	T	W	T	F	Sa	Su	M
		1	2	3	4		5	6	7	8	9	10	11	12	13	14	15
Smith	8A-4P	1	1	1	1	8A-4P	1	0	0	1	1	1	1	1	0	0	1
Garrett	4P-12MN	0	1	1	1	12MN-8A	0	1	1	1	0	0	1	1	1	1	1
Presley	12MN-8A	1	*	*	1	Relief	1	1	1	1	1	1	*	*	1	1	1
Helton	Relief	1	1	1	0	4P-12MN	1	1	0	0	1	1	1	1	1	0	0

Note: October 5 date Garrett, Presley and Helton changed assignments.

Mt. Pleasant, October, 1962, Second Period

NAME	ASSIGNED HOURS	T	W	T	F	Sa	Su	M	T	W	T	F	Sa	Su	M	T	W
		16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Smith	8A - 4P	1	1	1	1	0	0	1	1	1	1	1	0	0	1	1	1
Helton	4P - 12MN	1	1	1	1	1	0	0	1	1	1	1	1	0	0	1	1
Garrett	12MN - 8AM	0	0	1	1	1	1	1	0	0	1	1	1	1	1	0	-
Presley	Relief	1	1	*	*	1	1	1	1	1	0	0	1	1	1	1	1

The claims were denied.

Exhibits 1 and 2 are attached hereto and made a part hereof.

The applicable schedule agreement is that effective April 1, 1946, as amended by Supplemental Agreement dated July 22, 1949, and Memorandum of Agreement dated August 5, 1950, relating to the 40-hour week, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: In August and September, 1962, there was a temporary vacancy in a second shift Chief Yard Clerk position at Mount Pleasant, Texas, due to an employee's illness. Rule 11, Temporary Assignments, Short Vacancy, provides in Section 11-1 for using (a) furloughed or extra employees, (b) a qualified employee holding Group 1 seniority and regularly assigned to a Group 2 or Group 3 position. However, there were no available workers in these categories. Carrier thereupon assigned V. Garrett, relief clerk at Tyler, Texas. Tyler and Mount Pleasant are in the same seniority district, although about 65 miles apart.

Petitioner claims that Garrett's assignment was improper, and that the work of the vacant position should have been divided among the three remaining employees at Mount Pleasant. Claims were submitted on behalf of all these men, but the case here is confined to the claim of M. W. Smith, who, at the time, occupied the first shift Yard Clerk position. Petitioner contends that Smith should have been used on one of the rest days of his position to fill the second shift job (at overtime rates).

Rule 10, Section 10-6, declares that "an employe will not be permitted to give up a position after the assignment has been made except by agreement between the officer of the Carrier and the duly accredited representative of the employes." It is clear that Garrett gave up his Tyler position to work at Mount Pleasant. The question, then, is whether he did so by agreement of the parties.

Both sides acknowledge that, prior to this incident, Garrett had been permitted to work at Mount Pleasant on certain occasions. Petitioner insists that the parties' agreement concerning Garrett limited such occasions to vacation relief, and that it was understood that he would not be used for vacancies or extra work to the detriment of the regular Mount Pleasant employees. To substantiate its contention, it relies principally on the text of an October 8, 1959 letter from General Superintendent J. R. Holden to General Chairman W. E. Straubinger:

"This will confirm our telephone conversation this morning in connection with Mr. Vernon Garrett:

As explained to your office, Mr. Garrett was permitted to go to Mt. Pleasant and work vacations at that location by special agreement between Carrier and Organization. Subsequent to going to Mt. Pleasant, Mr. Garrett was displaced from his regular position at Tyler and prior to expiration of 7 days thereafter he placed a bump on Station Accountant's position at Tyler, with the understanding that he would continue working at Mt. Pleasant until all vacations had been worked, after which he would break in on the Station Accountant's position and advise effective date he would assume the duties of this position. Mr. Garrett advised us October 1 that he would begin breaking in on the Station Accountant's position October 5. On October 7 he advised that he was physically incapable of handling the Station Accountant's job due to a back condition which prevented him from sitting in one place for long periods of time, and requested that he be permitted to withdraw his bump on Station Accountant's position and place bump on Third Trick General Clerk's position, Tyler Yard Office.

In our telephone conversation you advised that you would be agreeable to permitting Mr. Garrett to relinquish his bump on Station Accountant's position under the provisions of Rule 22-2 and exercise displacement on General Clerk's position at Tyler in accordance with Rule 15. Please confirm that you are agreeable to this manner of handling."

Petitioner emphasizes that General Superintendent Holden, in his letter, referred to vacation relief only.

However, when this letter is read carefully, it is apparent that the purpose of the parties' communication, at this juncture, was to arrange

for Garrett to give up a regular position and displace some other employee. This conclusion is confirmed by reference to General Chairman Straubinger's October 9, 1959 reply, in which he refers to Rule 22-2, but makes no reference whatsoever to Mount Pleasant or vacation relief. Mr. Straubinger wrote:

"In accordance with the above quoted Rule, we are agreeable to permit Mr. Vernon Garrett to give up the position of Station Accountant, Tyler, to which he is assigned, and exercise seniority rights as provided in Rule 15."

It is apparent, then, that the "agreement" negotiated in October, 1959, was a Rule 22-2 agreement, and had no relation to Rule 10-6. (Rule 22-2 provides that an incapacitated worker, if competent, may by agreement between the Carrier and General Chairman, exercise seniority as provided in Rule 15.) Consequently, we must look elsewhere for evidence of the parties' Rule 10-6 understanding.

The record shows that, between 1959 and July, 1962, Garrett performed 318 days of extra work at Mount Pleasant (he was regularly assigned to Tyler this entire period). During the years 1960-1962, he relieved on 45 days when Mount Pleasant men were off sick, 20 in 1960, 20 in 1961, and 5 in 1962 (prior to this incident). Those relieved included Presley, one of the Claimants in this group of grievances. The fact that, throughout the years, neither employees at Mount Pleasant nor the Organization protested Garrett's temporary assignments to non-vacation work, provides convincing substantiation for Carrier's assertion that the 1959 understanding regarding Garrett did not limit him to vacation relief. Under these circumstances the claim must be denied.

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 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 12th day of May 1966.

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