

Award No. 14975

Docket No. CL-15546

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5727) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Sacramento, California, when on April 1, 1961, it failed to call Mr. P. F. Rodriguez to perform service in the taking of a special inventory but, instead, called and used junior employe Robert Rose therefore; and,

(b) The Southern Pacific Company shall now be required to allow Mr. P. F. Rodriguez eight hours' additional compensation at the time and one-half rate of Shipping and Receiving Clerk, Saturday, April 1, 1961.

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 employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time of this dispute Mr. P. F. Rodriguez, hereinafter referred to as the Claimant, was an unassigned employe at Sacramento General Stores with a seniority date of June 4, 1949.

During the week March 27 through March 31, 1961, Carrier's Stores Department personnel was assigned to the work of preparing for and taking of its annual inventory. It was necessary to continue the inventory work on Saturday, April 1, 1961. Carrier did not call Claimant therefore but did call and use a junior employe, Mr. Robert Rose, seniority date August 4, 1950, regularly assigned to position of Surplus Material Clerk, hours 7:30 A. M. to 4:00 P. M., rest days Saturday and Sunday.

Claimant was used to fill positions that did not assist in taking the annual stock inventory, and he was not called to perform service Saturday, April 1, 1961.

5. Claimant submitted a time card wherein he claimed 8 hours at overtime rate of pay applicable to position of Shipping and Receiving Clerk on April 1, 1961, and by letter dated April 21, 1961, Carrier's General Storekeeper advised claimant as follows:

"In connection with your time card claim for 8 hours at Shipping and Receiving Clerk's rate for April 1, 1961 account not called to assist in taking inventory and a regular assigned Surplus Clerk was called in your place:

It has always been the practice in the past to use the Office personnel in taking inventory. This is done every year and this year's inventory was no exception. Therefore your claim is denied."

By letter dated June 7, 1961 (Carrier's Exhibit A), Petitioner's Division Chairman submitted the claim on behalf of claimant for April 1, 1961, to Carrier's General Storekeeper, based on the premise "... that inventory work properly belongs to the classifications of Section Stockmen and Shipping and Receiving Clerks and that to permit a 'Surplus Material Clerk' junior to our claimant to perform overtime service in a classification assignable to the classifications listed herein is in violation of agreement provisions." By letter dated August 2, 1961 (Carrier's Exhibit B), Carrier's General Storekeeper denied the claim.

By letter dated August 25, 1961 (Carrier's Exhibit C), the Division Chairman advised Carrier's General Storekeeper that the claim would be appealed.

By letter dated September 29, 1961 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Manager of Stores, and by letters dated November 8, 1961, and January 25, 1962 (Carrier's Exhibit E), the latter denied the claim.

By letter dated March 8, 1962 (Carrier's Exhibit F), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated November 21, 1963 (Carrier's Exhibit G), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant has made a time card for eight hours compensation, contending that Carrier wrongfully called and used a junior employe to perform service in the taking of an inventory. Claimant further contends that he (claimant) was entitled to this work in preference to the junior employe.

The burden of proving Claimant's superior right to this work is on the Claimant. Having failed to prove such superior right to the work performed in this instance, this 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 30th day of November 1966.