



Award No. 16036
Docket No. CL-16367

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6028) that:

1. Carrier violated the Clerks' Rules Agreement at Tacoma, Washington, when it failed to compensate employees for working thirty (30) minutes overtime due to not being properly relieved when the starting time of positions covering around-the-clock service were changed thirty minutes.

2. Carrier shall now be required to compensate employee P. W. Wood and E. P. Logan for thirty (30) minutes each at the penalty rate of their respective positions for service performed on their shifts of August 15, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee P. W. Wood is the regularly assigned occupant of Assistant Chief Yard Clerk Position 8603 at Tacoma Yard, Seniority District No. 45, with assigned hours 9:30 P.M. to 5:30 A.M., Thursday through Monday, with rest days of Tuesday and Wednesday, at a rate of pay of \$22.2984 per day.

Employee E. P. Logan is the regularly assigned occupant of Yard Checker Position 8606 at Tacoma Yard, Seniority District No. 45 with assigned hours of 9:30 P.M. to 5:30 A.M., Thursday through Monday, with rest days of Tuesday and Wednesday, at a rate of pay of \$21.3504 per day.

Both of the aforementioned positions perform service on a shift which is part of and included in around-the-clock service in existence at the Tacoma Yard.

On August 11, 1965, Superintendent J. J. Nentl issued the following notice:

"CLERKS' NOTICE BOARD - TACOMA YARD

Effective Monday, August 16, 1965, the starting time of the following clerical positions will be 30 minutes later than at present:

**CARRIER'S EXHIBIT B - Letter written by Mr. Amour to
Mr. Gilligan under date of April 18, 1966.**

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants remained on duty for thirty minutes following the expiration of their regularly assigned shifts on August 15, 1965 at 5:30 A.M. because the starting time of the next shift had been changed from 5:30 A.M. to 6:00 A.M. Petitioner contends that Claimants are entitled to compensation for thirty (30) minutes each at the penalty rate of their respective positions under Rule 32(b) of the controlling Agreement because clerks at the Tacoma Yard are required to remain on the job until relieved by employees on the following shift pursuant to standing orders and past practice.

Carrier denies that Claimants were required to remain on duty until relieved and that no standing order exists as alleged by Petitioner. Furthermore, Carrier contends that Claimants had no authority to remain on duty beyond their respective shifts without direction from the Carrier under Rule 32(a) of said Agreement.

The pertinent provisions of the Agreement are as follows:

"RULE 32.

(a) No overtime hours will be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable. [Emphasis ours.]

(b) Except as provided in Rule 29, time in excess of eight (8) hours, exclusive of the meal period, on any day, will be considered overtime, and paid on the actual minute basis at the rate of time and one-half."

Petitioner's case is bottomed upon the allegation that clerical employees at Tacoma Yard have standing instructions not to leave their assignments until relieved, and that such practice has been in existence for many years. Carrier emphatically denies the existence of such standing orders and resulting practice over the years.

Petitioner offered in evidence a letter signed by eleven employees of Carrier addressed to Petitioner's General Chairman, which supports Claimant's contention that all clerical employees in the Yard have been instructed to remain on duty until relieved because it is a three shift operation. This letter also provides in part that the signatories were to notify the chief clerk if the regular relief did not arrive in time or on time so that he could arrange for other relief.

Thus, it is clear that the decisive question is whether Rule 32(a) has been abrogated or substantially amended by conflicting oral instructions and contrary practice over the years. In the absence of direct testimony of probative value concerning the patent conflict in the evidence offered by the parties, we must conclude that the pertinent language found in the Agreement is controlling. This Board cannot settle such question of disputed facts, and we have no alternative but to dismiss the claim. Awards 12789, 13578, and others.

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 on the facts of record the Division is unable to determine whether Carrier violated the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1968.