

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

AMERICAN REFRIGERATOR TRANSIT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6315) that:

1. Company violated the Clerks' Agreement at Kansas City, Missouri, on Wednesday, December 7, 1966, when it did not permit Perishable Inspector L. W. Pierce to work his own position, 3 P. M. to 11 P. M., on his rest day, for which he would have been compensated at the time and one-half rate; instead, it moved an employee regularly assigned to work position of Perishable Inspector, 7 A. M. to 3 P. M., to that vacancy, in violation of Rules 8, 14, 16, and 17 of the Clerks' Agreement.

2. Company shall be required to compensate Perishable Inspector L. W. Pierce for eight hours at punitive rate, amount \$33.96, for Wednesday, December 7, 1966.

EMPLOYES' STATEMENT OF FACTS: On and prior to December 3, 1966, the forces employed by the Company at Kansas City (including one job at Omaha) subject to the scope and operation of the Clerks' Agreement, included the following:

Position, Name of Occupant, And Seniority Date On The Central District Seniority Roster	Daily Rate	Hours of Assignment	Meal Per.	No. Days Per Week Position Works	Rest Days
Diversion & General Clerk E. H. Hamner 6-16-1943	\$23.11	8:30AM- 5:30PM	12:30PM -1:30PM	7	Sat&Sun
Lead Inspector J. H. Violet 7-27-1934	23.11	7AM-3PM	20 min.	7	Sun&Mon
Inspector L. W. Pierce 7-19-1944	22.64	3PM-11PM	20 min.	7	Wed&Thur

Dear Mr. Lupton:

Referring to conference held in my office this morning, in connection with claim of Perishable Inspector L. W. Pierce, Kansas City, Missouri for eight hours at punitive rate for Wednesday, December 7, 1966, when he was not permitted to work as inspector on his own position on his rest day when the regularly assigned man was absent.

Our position, as stated to you in conference, is that the man who was actually used to fill the vacancy was assigned to the position of Relief Inspector No. 3, which position worked four days per week to relieve regular assigned positions and on the fifth day he was assigned as a Utility Inspector working with and assisting a regular assigned inspector. He was a Utility Inspector for that day (Wednesday, December 7, 1966) and as such was subject to that part of Rule 8 pertaining to emergencies when due to sickness or absence of a regularly assigned employee.

In view of our position, and as stated to you in conference, claim is respectfully declined.

Yours truly,

/s/ Thos. E. Fox"

10. Claim was progressed in the proper manner on the property and is properly before the Board.

OPINION OF BOARD: On and prior to December 3, 1966, the forces employed by Carrier at Kansas City and one job at Omaha subject to the scope of Clerks' Agreement, included the following:

Position, Name of Occupant, And Seniority Date On The Central District Seniority Roster	Daily Rate	Hours of Assignment	Meal Per.	No. Days Per Week Position Works	Rest Days
* * * * *					
Lead Inspector J. H. Violet	7-27-1934	23.11	7AM-3PM	20 min. 7	Sun&Mon
Inspector L. W. Pierce	7-19-1944	22.64	3PM-11PM	20 min. 7	Wed&Thurs
* * * * *					
Relief Inspector Number 2 P. H. Griffin	9-13-43	various, as shown below		5	Fri&Sat
Sun (only)	Lead Inspector	7AM-3PM			
Mon&Tues	Inspector	5AM-1PM			
Wed&Thur	Inspector	3PM-11PM			

Position, Name of Occupant, And Seniority Date On The Central District Seniority Roster	Daily Rate	Hours of Assignment	No. Days Per Week Meal Position Per. Works Rest Days
Relief Inspector Number 3 H. F. Grieb	5-4-1964	various, as shown below	5 Thurs&Fri
	Sat&Sun	Inspector (Omaha)	24 hour assignment
	Mon&Tues	Inspector	3PM-11PM
	Wed (only)	Inspector	7AM-3PM
Vacation Relief Clerk J. A. Ripley	6-1-1966"		

Lead Inspector Violettt retired effective December 4, 1966. The rest days of the position, Sunday, December 4 and Monday, December 5, were worked on the 4th by Relief Inspector No. 2, P. H. Griffin; and, on the 5th by Relief Inspector No. 1, J. B. Carter.

On Tuesday, December 6, Relief Inspector No. 2, Griffin, moved into the vacancy on the Lead Inspector position created by Violettt's retirement. This left Griffin's Relief Inspector No. 2 position vacant, the incumbent of which position was assigned to relieve Inspector L. W. Pierce, Claimant herein, on Wednesday, December 7, hours 3:00 to 11:00 P.M. There were no furloughed or extra employees available for assignment as rest day relief on Pierce's Inspector position on that day. Carrier assigned Vacation Relief Clerk J. A. Ripley, who was assigned to vacation relief of H. F. Grieb, Relief Inspector No. 3, to work the rest day of Pierce's position and blanked the Relief Inspector No. 3 Position on that day which had assigned hours of 7:00 A.M. to 3:00 P.M.

Clerks contend that Ripley, in his relief of Grieb, had assigned hours of 7:00 A.M. to 3:00 P.M. on Wednesday, December 7. Therefore, when Carrier assigned him to work, instead, the hours from 3:00 P.M. to 11:00 P.M. on that date it suspended him from his assigned hours to avoid payment of overtime which otherwise would have accrued to Claimant had he been assigned to work his position on the rest day in the absence of an available furloughed or extra employee.

The following admission by Carrier, in a letter to the Local Chairman dated January 26, 1967, is dispositive of the issue in this case.

"Mr. J. A. Ripley was working the Relief Inspector No. 3 position, which is assigned to relieve four days a week on regular established positions. On the fifth day he is an Utility Inspector to comply with the 40-hour week guarantee and must have assigned hours on this day to comply with the Agreement." (Emphasis ours.)

We will sustain the Claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.