

Award No. 16627
Docket No. CL-16845

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6155) that:

(a) The Southern Pacific Company violated the Agreement at Los Angeles, California, when it unilaterally removed a relief employe from his assignment on Train Clerk Position No. 164 to fill vacancy on Bill Clerk Position No. 38, and then failed to fill the resultant vacancy created thereby; and

(b) The Southern Pacific Company shall now allow David E. Haley, the regular occupant of Train Clerk Position No. 164 who was observing his rest days and was available, eight (8) hours' compensation at the time and one-half rate of his assignment, for August 3, 1961, when not called to fill the vacancy on his position.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent 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.

On the date involved, David E. Haley (hereinafter referred to as the Claimant) was the regular incumbent of Position No. 164, Train Clerk, Los Angeles Yard Office, assigned hours 11:00 P. M. to 7:00 A. M. Saturday through Wednesday, rest days Thursday and Friday. This position is relieved each Thursday by Relief Position No. 18, occupied at the time by Archie J. Sanns.

and during his tour of duty that date he was instructed to perform the duties of Position No. 38, Bill Clerk. Attached as Carrier's Exhibit A is copy of Clerk Sanns' time card indicating that he reported for Train Clerk Position No. 164 at 10:53 P. M., Wednesday, August 2, 1961, and registered off duty from that position at 7:01 A. M., Thursday, August 3, 1961 on Pacific Standard Time. Under applicable agreement provisions, during period of Daylight Saving Time the standard time hours of assignment of positions going on duty at 12 midnight or 12:01 A. M. are advanced to 11:00 P. M., Pacific Standard Time, but for purposes of applying current agreement provisions, including those relating to rest days, holidays and exercise of seniority, such positions are treated as if starting time and date on which service commenced had remained unchanged.

The duties of Position No. 164, Train Clerk, were interchangeable and simultaneously performed by other employes within the same office, having the same title (Train Clerk) and at the time Clerk Sanns performed the duties of Position No. 38, all train clerk work which had to be performed on the shift involved was performed by train clerk force on duty.

4. By letter dated August 29, 1961 (Carrier's Exhibit B), Petitioner's Division Chairman submitted claim to Carrier's Superintendent at Los Angeles, in behalf of David E. Haley (hereinafter referred to as the Claimant) for 8 hours at the applicable overtime rate of Position No. 164, Train Clerk, on Thursday, August 3, 1961, based on the premise there was an alleged vacancy on that position that date and claimant, who was the regular assigned incumbent thereof, should have been called on his rest day to perform service thereon. By letter dated October 11, 1961 (Carrier's Exhibit C), Carrier's Superintendent denied the claim, to which, by letter dated October 12, 1961 (Carrier's Exhibit D), Petitioner's Division Chairman advised that the claim would be appealed.

By letter dated December 8, 1961 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated June 14, 1963 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned to Train Clerk Position No. 164 at the Los Angeles Yard Office; his work week is Saturday through Wednesday, with rest days of Thursday and Friday. The position is regularly relieved on Thursdays by Relief Position No. 18, incumbent Archie Sanns. According to Organization, when Sanns reported to perform the Thursday, August 3, 1961, relief work of Position No. 154, he was removed from the position and placed on Position No. 38 (Bill Clerk). This, according to Organization, created a vacancy in Position No. 164 for which Claimant should have been called and used, instead of having the work of Position No. 164 performed by other Train Clerks who were on duty. Carrier, on the property, answered that Sanns had worked on Position No. 164 that Thursday as well as on Position No. 38, so "the position was filled on that date" by Sanns.

Resolution of this issue of fact is critical for the Organization's case, since if, as claimed by Carrier, Sanns worked that shift on Position No. 164, there was no vacancy for which Carrier should have called Claimant, Claimant

having been called for and refused the vacancy on Position No. 38. Aside from a repeated assertion that Sanns had been removed from the work on Position No. 164 (which Carrier denied) the Organization offered nothing else to prove that Position No. 164 was in fact vacated on the Thursday in question. It is Organization's burden to establish all of the facts necessary to support its claim; we cannot from this record resolve this dispute as to this essential fact, and consequently we must deny 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 the Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October 1968.