



Award Number 17373

Docket Number CL-18073

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

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

THE INDIANAPOLIS UNION RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-6572) that:

1. The Carrier violated the terms of the current Clerks' Agreement and supplements thereto on December 1, 1967, when work was required to be performed and employees assigned to and working in the Mail and Baggage Department were not called to work overtime but instead Carrier called employees from other departments to work overtime in violation of the Agreement.
2. (a) Walter R. Briner shall now be paid for 8 hours at the overtime rate of Baggage and Mail Handler for December 1, 1967.
- (b) Fred Henning shall now be paid for 8 hours at the overtime rate of Baggage and Mail Handler for December 1, 1967.
- (c) Bobby Scotten shall now be paid for 8 hours at the overtime rate of Foreman for December 1, 1967.
- (d) James L. Stogdill shall now be paid for 8 hours at the overtime rate of Baggage and Mail Handler for December 1, 1967.
- (e) C. R. Wilson shall now be paid for 8 hours at the overtime rate of Baggage and Mail Handler for December 1, 1967.

EMPLOYEES' STATEMENT OF FACTS: Claimants are the incumbents of regular assigned positions as B & M Handlers in the Mail Room at the Indianapolis Union Station, with the exception of claimant Scotten who is a Track Foreman at the same location. On the date of claim, December 1, 1967, the volume of mail to be handled had increased considerably and Carrier had determined it needed additional workers beyond the regular work force.

However, instead of calling the five claimants to work overtime it elected to use two employees from Accounting, two employees from the Ticket Office and one employee from the Belt Shops. Their regular assignments ended from 4:30 P.M. through 6:30 P.M. and all were required to double over.

In contrast all of the claimants had eight hours or more rest, their previous tour having terminated from 6:30 A.M. through 8:25 A.M., and they were more fully acquainted with the work since they held regular assignments in the Mail Room as B & M Handler or as a Track Foreman.

The claims were filed by the employees on December 2, 1967, and denied by the Carrier, the Local Chairman appealed the claims on March 1, 1968, and, being declined, was timely appealed to Carrier's highest officer designated to receive and consider such appeals. Conference was held on May 14 and July 27, 1968. Copies of all correspondence in connection with these claims are attached and identified as Employees' Exhibits "A" through "J".

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Due to an increase in volume of mail at the start of the 1967 Christmas season, it was necessary to bolster the mail handling force on Tour 3, or second trick, December 1, 1967. Five (5) employees made up from the Ticket Office and Accounting Office were used. Employees from these departments were and are members of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, and are in the Group I classification.

Employees from these departments and occasionally other departments, have been used in this same manner prior to 1967 without complaint from the Organization. An example of this: on Friday, October 14, 1966, one employee from the Ticket Office was used and two from the Accounting Department; October 19, 1966, two employees from the Accounting Department; October 20, 1966, one from the Ticket Office, five from the Accounting Department; October 22, 1966, one clerk from the Belt Shops; October 28, 1966, four employees from the Accounting Department; October 29, 1966, one clerk from the Belt Shops.

Not only were employees used in 1966, but also in years prior to this, and no complaint from the Organization.

On December 1, 1967, on Tour 1, or third trick, we used two extra men, three regular men day off extra, one regular man on birthday holiday and one regular day off man, to fill a regular assignment. On Tour 2, first trick, we used three regular day off men extra, four regular day off men, to fill regular assignments. On Tour 3, second trick, we used one regular day off man to fill a regular assignment, one regular day off man extra and six extra men, including five from the Accounting Department and Ticket Office. In addition to this, the three tricks made a total of twenty-six (26) hours' overtime.

OPINION OF BOARD: The circumstances which gave rise to this claim are not in dispute.

Due to an increase in volume of mail at the start of the 1967 Christmas season, Carrier found it necessary to supplement the personnel on the mail

handling force on Tour 3, or second trick, December 1, 1967. For this purpose, it assigned two employees from Accounting, two from Ticket Office and one from the Belt Shops. The regular assignment of these employees had ended at 4:30 P.M. to 6:30 P.M. (that is, the immediately preceeding shifts); thus they continued on the additional hours as overtime.

Claimants had completed preceeding tours ending 6:30 A.M. through 8:25 A.M. Four occupied regular assignments in the Mail Room as Baggage and Mail Handlers and one as Track Foreman. They claim 8 hours at the overtime rate for each on the following grounds:

Agreement Rules 42 and 43 which read as follows:

"RULE 42—OVERTIME

"(f) Work on unassigned Days. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"(g) Except where it is otherwise agreed between the Management and General or Local Chairman, in working overtime before or after assigned hours or on call under Rule 43, employees regularly assigned to the positions on which overtime is necessary shall be given preference; the same principle shall apply in working extra time on holidays. (added effective January 1, 1956)"

"RULE 43—NOTIFIED OR CALLED

"Employees notified or called to perform work not continuous with, before or after their regular work period, or on Sundays and specified holidays, shall be allowed the minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis. Employees who have completed their regular tour of duty and have been released, required to return for further service, may, if the conditions justify, be compensated as if on continuous duty."

Supplement No. 1 of Memorandum of Agreement between the parties which provides:

"It is understood and agreed that in the event there is extra work in the Baggage and Mail Department that cannot be taken care of by the regular force or extra force or by the employment of new employees, and after the regular force and extra force have been permitted to work what overtime they desire, employees on other assignments and employees of other departments coming under the same seniority roster may be permitted to work outside of the assigned hours of their regular position in the Baggage and Mail Department and will be paid for such service at the time and one-half rate based on rate of the position worked."

Carrier takes the position that Rule 42(g) does not obligate it to use employees in advance of their regular assignments and that employees and Organization have acquiesced in such interpretation by being parties to repeated practice of Carrier in using other employees for run-on overtime, rather than position occupants for pre-shift overtime.

Organization denies that this had been the practice and contends that even if it had been, does not vitiate the clear meaning of governing Agreement terms.

Organization submits also a bulletin issued by Carrier dated December 9, 1966, which reads in part as follows:

"Effective December 10, 1966 at 6:00 A.M. and until further notice all U.S. Mail Room Employees will work their days off as long as the volume of U.S. Mail is sufficient. No employees will be off without permission of the General Foreman."

We find the language of Rule 42(f) and (g) clear as an expression of intent that "employees regularly assigned to the positions on which overtime is necessary shall be given preference" in "working before or after assigned hours". The record in the instant claim shows that the Claimants were denied such preference. The claims made must therefore be sustained.

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 violated.

A W A R D

Claim sustained

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1969.