



Award Number 17912

Docket Number CL-18333

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6606) that:

1. Carrier violated the Clerks' Agreement when, on ten dates, namely, January 30, 31, February 1, 2, 5, 12, 13, 14, 15 and 16, 1968, it required the occupant of Stenographer position in the Superintendent's office, St. Louis, Missouri, to suspend work on that position and work eight hours each day in the Train and Enginemen's Timekeeping Department in the Superintendent's office, St. Louis, Missouri, as an addition to the established force therein, in order to absorb overtime, to perform the work of posting time, which was a major part of the normal and regular duties of the Chief Timechecker and Timechecker, which Carrier action was in violation of Rules 1, 2, 3, 5, 8, 9, 13, 14, 21 (h), 25 (f), 45 and related rules of the Clerks' Agreement.
2. (a) Carrier shall be required to compensate regularly assigned Chief Timechecker G. W. Hawthorne for four (4) hours at the punitive hourly rate of \$5.081, amount \$20.324, for each of the 10 dates shown in Item 1 above, amount \$203.24.

(b) Carrier shall be required to compensate regularly assigned Timechecker L. C. Murphy for four (4) hours at the punitive hourly rate of \$4.935, amount \$19.74, for each of the ten dates shown in Item No. 1 above, amount \$197.40.

EMPLOYEES' STATEMENT OF FACTS: The Superintendent's office force at St. Louis, Missouri, located at 3001 Chouteau Avenue, consisted of the following positions, when these claims originated and during the claim period:

OPINION OF BOARD: Upon consideration of testimony presented, exhibits introduced and the collective bargaining agreement, it is determined that the Carrier did not violate Rules 1, 2, 3, 5, 8, 9, 13, 14, 21 (h), 25 (f), 45 and related rules for the Clerks' Agreement.

We agree that Mr. Hawthorne and Mr. Murphy, by virtue of their seniority rights, established with the provisions of Rule 3, were assigned to the Chief Timechecker and Timechecker positions respectively. They held contractual right to occupy these positions and to perform the work that was assigned and attached thereto, until such time as they vacated those positions in accordance with the rules of the Clerks' Agreement.

In the instant case, there was an increase in the volume of timekeeping work of compiling payrolls. Mrs. Blalock and Mrs. O'Laughlin were instructed to temporarily assist in the timekeeping department and were paid the higher rates of pay.

We believe the agreement allows the lending of a hand by one employee to another under the circumstances present here and that the temporary occurrence on the dates involved was in complete harmony with the provisions of Rule 31 (c). If the move had been dictated by a desire to prevent the Timechecker from absorbing overtime the claim would be compensable. It was not.

Under all the facts and circumstances herein, we cannot find that the Claimants have sustained the burden of proof required to establish that the Carrier required Mrs. Blalock and Mrs. O'Laughlin to suspend work on the Stenographer position in order to absorb overtime, to perform the work of posting time, which was a major part of the normal and regular duties of the Chief Timechecker and Timechecker.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1970.

**LABOR MEMBER'S DISSENT TO AWARD NO. 17912
(DOCKET CL-18333)**

The Referee readily admits in the Award (2nd paragraph of Opinion) that:

Hawthorne and Murphy, by virtue of their seniority rights, were assigned to the Chief Timechecker and Timechecker positions, respectively. They held contractual right to occupy these positions and to perform the work that was assigned and attached thereto, until they vacated those positions.

Then he reverses himself and holds that these two employees did not have contractual rights to perform the work that was assigned and attached to positions, this notwithstanding the fact they had not vacated their positions.

The next paragraph (paragraph 3) states "there was an increase in the volume of timekeeping work of compiling payrolls". There is no proof of record that there was an "increase in the volume of timekeeping work of compiling payrolls". That allegation is found in the letter the top Carrier officer wrote to the General Chairman wherein he asserted: "The facts as we understand them are as follows: There was an increase in the volume of timekeeping work of compiling payrolls." The Referee's language is exactly the same, which he accepted as FACT, but which was simply a figment of the top Carrier officer's imagination—"manufactured" would be a better term to apply to it. Nothing, except imagination, in the Record proves there was an "increase in the volume of timekeeping work"; if there had been, which the Employees deny, payroll records would have proved it and could easily have been entered in the Record by Carrier—if such had been FACT.

There are FACTS in the Record which the Referee either failed to note or which he chose to ignore:

FACT #1

The first date of claim is January 30. On January 19, Claimant Hawthorne's position of Car Order Clerk was abolished on paper only meaning, of course, that the duties of the position still existed and were required to be performed. When Hawthorne displaced Murphy on the position of Chief Timechecker, Carrier required him to take his old duties of Car Order Clerk with him to his new position. The results are obvious: between two (2) employees—Hawthorne and Murphy—there were three (3) positions to work. Contrary to the alleged "increase in volume of work" there existed, in FACT, a decrease in the number of employees available but with the same volume of work as in the past. There are no FACTS of Record to refute these statements, fully covered in the Employees' submission and rebuttal statements.

FACT #2

It was pointed out to the Referee that a Carrier does not have the unqualified right to move employees around with impunity which would have the effect of absorbing overtime of employees contractually entitled to perform the work, which would, of necessity, be on an overtime basis in this dispute had such rearrangement of employees not been made by the Carrier. The Stenographer and her vacation relief worker were both required to vacate the Stenographer position in toto during the period of claim, to perform duties

completely foreign to the duties of Stenographer and, in so doing, Carrier avoided additional payments of overtime to Claimants.

FACT #3

Mrs. Blalock was employed by Carrier for one purpose and only one—to fill the position of a vacationing employe, Mrs. O'Laughlin's. That is the only purpose for which her services could be properly utilized under the agreement. She was permitted to fulfill the duties of that position for three (3) days, but upon reporting the fourth day to work the position for which she had been solely employed, she was required to suspend her work of the position for which she was employed and go over to another department to perform unrelated work for the next five (5) work days of her position.

FACT #4

Rule 9—titled "Filling of New Positions and Vacancies of Less Than 30 Days"—cited by the Employes, provides that Carrier may establish new positions of less than 30 days duration without bulletining them. Carrier did in fact establish such a position in this dispute, but did not bulletin it. Paragraph (a) of this rule provides in part: "However, in the filling of such vacancies or additional positions provisions of Rule 14 shall be observed, ***" and paragraph (b): "When * * such vacancy cannot be filled by qualified available extra or furloughed employe, the Carrier may move an assigned employe from his regular position." Carrier did not attempt to call an available extra or furloughed employe, as the rule required it must first do.

The following Awards were presented to the Referee in the initial panel discussion and were again furnished to him (along with the above) in re-argument which had been requested by the author, with the respectful request that he carefully review and reconsider his proposed award in this dispute:

AWARD	REFEREE	AWARD	REFEREE
5876	Yeager	5578	Whiting
3582	Rudolph	5727	Munro
4499	Carter	5895	Jasper
4641	Carmody	6661	Wyckoff
4672	Stone	6394	Elkouri
4690	Connell	7187	Smith
4692	Connell	7228	Smith
4710	Connell	7346	Coffey
5125	Carter	8205	Wolff
5287	Munro		
	Award 26, SBA No. 194—Chairman Wyckoff		
	Award 34, SBA No. 170—Chairman Sharpe		

The Referee refused to alter his proposed award, and it was adopted by the Majority, the Referee and the Carrier Members.

For the above reasons, I dissent.

/s/ C. E. KIEF
C. E. Kief, Labor Member
5-14-70