

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
EMPLOYEES**

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6670) that

1. Carrier violated the Clerks Agreement when it allowed junior employees to perform work on "Special Study" on June 29, July 13 and 27, 1968 in the Revenue Accounting Department, Baltimore, Maryland and that
2. Carrier shall now allow eight (8) hours pay at the time and one-half rate for each of the dates of June 29, July 13 and 27, 1968 each of the following employees: W. H. Carroll, E. H. Bees and J. W. Hisley.

OPINION OF BOARD: The Claimants occupy clerical positions in the office of the Manager Revenue Division, Accounting Department, Baltimore, Maryland. This office consists of 34 clerical employees who are assigned to work five days per week, with rest days on Saturday and Sunday.

The Accounting Department was requested by the Carrier's Law Department to prepare a report of the proportion of gross freight revenues both local and forwarded to other lines on shipments originating at Pennsylvania Freight Stations in the calendar years 1966 and 1967. This report was required in connection with the hearings in the State of Pennsylvania relative to Pennsylvania Corporate Income Taxes.

The Special Report involved research and time in examining interline settlement papers and waybills to determine the freight revenues and the proportion of those revenues which accrued to the Western Maryland. Some of the work was done during regular office hours, but because of the magnitude of the study and the time element for its completion, it was necessary for overtime work on three Saturdays.

Logic and good business practice would dictate that overtime should be given to employees who perform work of the same type and character during their regular work hours. The record indicates that it has been the procedure

in the Revenue Division to assign overtime work to the employees who normally perform that type of work.

We will affirm that when the Carrier in exercise of its management prerogative decides that overtime is required, it is contractually bound to offer it in accordance with seniority to those clerks in the section having the same preponderating duties.

However, the record clearly states that "the work performed was of a nonrecurring nature not specifically assigned to anyone in this division." This Board has held that phrases "special duty" and "work of a special nature" are not words of art which through usage have an established meaning in the railroad industry. Therefore, it is not enough to quote them as sufficient to deprive an employee of his collective bargaining rights. In view of the above facts and after careful study of the record and the Agreement between the Western Maryland Railway Company and the Brotherhood of Railway, Airline and Steamship Clerks, we find that the Carrier did not properly offer overtime work not specifically assigned in seniority order. We must 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 17th day of July 1970.

EMPLOYEES' STATEMENT OF FACTS: Claimants occupied regular assignments in the Revenue Accounting Department, Baltimore Maryland, with work week of Monday through Friday.

The Claimants are all senior to the employees called to perform the overtime work which the Company called a "Special Study."

There is no dispute that the employees called by the Company to perform the work relative to the "Special Study" were junior in seniority to the Claimants. Carrier does not deny this fact.

On August 17, 1968, the organization filed claim with the Company as displayed in "Employees' Exhibit A."

This claim was denied by Mr. E. D. Smith, Manager Revenues Division under date of September 12, 1968 and that letter of denial is entered as "Employees' Exhibit B."

Appeal was made by the Organization in letter dated October 7, 1968 to Mr. E. P. Holland, Controller, and is referred to hereinafter as "Employees' Exhibit C."

Immediately thereafter, in letter dated October 7, 1968, Mr. Holland denied the claim to the Brotherhood, see "Employees' Exhibit D."

The General Chairman for the Brotherhood, in letter dated November 16, 1968, appealed the case to the Manager of Labor Relations, Mr. F. B. Plummer, and he denied the claim. See "Employees' Exhibits E and F," respectively.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claimants occupy clerical positions in the office of the Manager Revenue Division, Accounting Department, Baltimore, Maryland. This office consists of 34 clerical employees who are assigned to work five days per week, 8:30 A. M. to 5:15 P. M. (45 minutes lunch), Monday through Friday, with rest days on Saturday and Sunday.

The Accounting Department was requested by the company's Law Department to prepare a report of our proportion of gross freight revenues, both local and forwarded to other lines, on shipments originating at Pennsylvania freight stations in the calendar years 1966 and 1967. This report was required in connection with tax hearings in the State of Pennsylvania relative our Pennsylvania corporate income taxes.

The special report involved considerable research and time in examining interline settlement papers and waybills to determine the freight revenues and the proportion of those revenues which accrued to the Western Maryland. Some of the work was done during regular office hours, but because of the magnitude of the study and the time element for its completion, it was necessary for overtime work on three Saturdays. The same employees were used for the overtime work as performed it during regular work hours, and the following persons were assigned on the claim dates:

Claim Date	Name	Seniority Date
6-29-68	C. S. Richter	11-18-43
	L. W. Albaugh	9-23-47
	R. L. Whitson	8-28-50
7-13-68	C. S. Richter	11-18-43
	L. W. Albaugh	9-23-47
	R. L. Whitson	8-28-50
	R. L. Bruce	1- 2-52
	A. L. Rivera	8-23-66
7-27-68	C. S. Richter	11-18-43
	L. W. Albaugh	9-23-47
	R. L. Whitson	8-28-50
	A. L. Rivera	8-23-66
	S. A. Button	10- 2-67

On August 17, 1968, Local Chairman D. E. Muhl filed a claim on behalf of the following employees for one day's pay at overtime rate for June 29, July 13 and July 27, 1968, alleging that on the basis of their seniority they should have been given preference to the overtime work over the employees who were used:

Name	Seniority Date
W. H. Carroll	7-12-37
E. H. Bees	5-19-41
J. W. Hisley	4-16-42

The claim was progressed on appeal to the Mgr. Revenue Division, the Controller and to the Manager of Labor Relations. It was discussed in conference with the Manager of Labor Relations on January 23, 1969 and denial decision rendered on February 11, 1969. A copy of the General Chairman's letter of for the overtime work as performed it during regular work hours and the decision of the Manager of Labor Relations dated February 11, 1969 is attached as Carrier's Exhibit "B." The time limits for rendering decision had been waived by agreement between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants occupy clerical positions in the office of the Manager Revenue Division, Accounting Department, Baltimore, Maryland. This office consists of 34 clerical employees who are assigned to work five days per week, with rest days on Saturday and Sunday.

The Accounting Department was requested by the Carrier's Law Department to prepare a report of the proportion of gross freight revenues both local and forwarded to other lines on shipments originating at Pennsylvania Freight Stations in the calendar years 1966 and 1967. This report was required in connection with the hearings in the State of Pennsylvania relative to Pennsylvania Corporate Income Taxes.

The Special Report involved research and time in examining interline settlement papers and waybills to determine the freight revenues and the proportion of those revenues which accrued to the Western Maryland. Some of the work was done during regular office hours, but because of the magnitude of the study and the time element for its completion, it was necessary for overtime work on three Saturdays.

Logic and good business practice would dictate that overtime should be given to employees who perform work of the same type and character during their regular work hours. The record indicates that it has been the procedure in the Revenue Division to assign overtime work to the employees who normally perform that type of work.

We will affirm that when the Carrier in exercise of its management prerogative decides that overtime is required, it is contractually bound to offer it in accordance with seniority to those clerks in the section having the same preponderating duties.

However, the record clearly states that "the work performed was of a nonrecurring nature not specifically assigned to anyone in this division." This Board has held that phrases "special duty" and "work of a special

nature" are not words of art which through usage have an established meaning in the railroad industry. Therefore, it is not enough to quote them as sufficient to deprive an employe of his collective bargaining rights. In view of the above facts and after careful study of the record and the Agreement between the Western Maryland Railway Company and the Brotherhood of Railway, Airline and Steamship Clerks, we find that the Carrier did not properly offer overtime work not specifically assigned in seniority order. We must 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 17th day of July 1970.