

Award No. 18091
Docket No. CL-18469

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6691) that:

(1) The effective Agreement, specifically Rule 33(b)-3, was violated commencing April 19, 1968, when the Carrier doubled Roundhouse Clerk Krajewski, rather than calling Claimants, who were off on days of rest.

(2) Claimants, Roundhouse Clerks off on rest days and entitled to the work involved in this dispute on the days claimed, shall now be compensated as follows:

Ray Jackson	- 8 hours at overtime rate for April 19, 1968,
Russell Woods	- 8 hours at overtime rate for April 20, 1968,
Daniel Norell	- 8 hours at overtime rate for April 22, 1968,
Richard Gunderson	- 8 hours at overtime rate for April 23, 1968,
	12 hours at overtime rate for April 24, 1968.

EMPLOYEES' STATEMENT OF FACTS: This claim has developed as a result of the Carrier, effective April 18, 1968, commencing updating and correcting its records due to reweighing of ore cars. This work was clerical in nature, but work which had not heretofore been assigned to, or performed by any employee as a part of his regular assigned duties.

On April 18, 1968, Roundhouse Clerk Krajewski was off on day of rest, and, under the provisions of Rule 33(B)-3, the Carrier properly used him on his rest day in the performance of the involved work. Commencing on April 19, 1968, the Carrier violated Rule 33(B)-3, of the effective Agreement when rather than properly calling Claimants on April 19th through April 24th in accordance with Rule 33(B)-3, Mr. Krajewski was doubled from his regular assignment and performed eight (8) hours' work at the overtime rate in the updating and correcting of the reweigh records of ore cars.

(b) When Items 1 through 7(a) have been exhausted, the senior qualified employee at the point will be called for the overtime in advance of and continuous with their regular shift.

Relief clerks will be considered regularly assigned employees under the above overtime rules.

8. In the application of Rule 33(b), 1 through 7, with respect to overtime for a full shift in Seniority Districts 2 and 26 only, after Items 1 through 7 have been exhausted within the district where overtime is required, employees at the point holding an assignment at the point in the seniority district other than the one in which overtime is required will be assigned in accordance with the provisions of Items 5 through 7, based on their seniority in the seniority district in which overtime is required.

In the event such overtime application is necessary between Districts 6 and 26, above principle shall likewise apply."

Copies of the correspondence involved in the handling of this claim on the property are attached and marked as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. All of the Claimants, and Robert M. Krajewski, were regularly assigned as clerks at Carrier's Proctor, Minnesota Roundhouse. Carrier's Proctor Car Department office, which is about three miles from the roundhouse, employed two other clerks. Extra work became available at the Car Department, and on April 18, 1968 Carrier called Krajewski, who was the only available clerk in the seniority district, and who was not working on his assigned rest day. All claimants except Norell had more seniority than Krajewski in Seniority District No. 3, the Mechanical Department of the Missabe Division. On each of the dates in the claim, Mr. Krajewski worked 8 hours at the Car Department office in addition to 8 hours at his regular assignment in the Roundhouse office. Each date in the claim was an assigned day of rest for each of the claimants.

Employees contend that the Carrier violated Rule 33(b)-3, the pertinent parts of which read as follows:

"(b) When it is known that overtime is required for a full shift, it will be assigned in the following manner:

1. To the senior available qualified extra or unassigned employees who do not have forty (40) hours of work that week.
2. To the senior employees assigned to the class of work who are off on days of rest and hold assignments on that particular shift upon which overtime work is performed.
3. When the conditions of Item 2 have been exhausted the other employees assigned to that class of work and off on

their rest days will be called in seniority order regardless of the shift on which they hold their regular assignment."

Mr. Krajewski was properly called on April 18, say the Employees, because that was his rest day. But he was improperly assigned overtime work on the following days. Instead, Claimants should have been called on their rest days.

Carrier contends that (1) that Rule 33(b)-3 applies only to employees "assigned to that class of work" and that the work at the Car Department was not the same class of work as that in the Roundhouse. (2) That the work was "of such a nature that training was necessary to its proper performance." Only Krajewski had been trained. Only Krajewski had the fitness and ability to perform that work. There is no evidence that the Carrier was arbitrary and capricious in assigning Krajewski to do the overtime work.

It is axiomatic that seniority is governed strictly by the provisions in the Agreement. Employees are entitled to no more than the contract authorizes. In the absence of any specific seniority rights, Carrier has the sole prerogative to assign employees when and where needed. The extent and limitation of the employee's rights are to be determined from the language in the negotiated Agreement.

On December 17, 1968 the General Chairman wrote to Carrier that the "work performed by Mr. Krajewski on these dates was . . . of a different class than that which he was regularly assigned, and at a different location than the location of his bulletined assignment." He agrees with the Carrier that "roundhouse clerks have not in the past, and cannot now, under the broadest of interpretations, be considered to be performing a class of work which would entitle them to overtime associated with updating the light weight records of ore cars. . . ." And that statement is nowhere challenged by Employees.

The mere fact that the Carrier assigned Krajewski to work overtime in a different class of work does not obligate the Carrier to also assign Claimants to that class of work. Where there are no employees who qualify for overtime work under Rule 33, Carrier may assign any employee without regard to seniority because no rule in the schedule agreement obligates the Carrier to assign overtime on a seniority basis alone. And there is no rule obligating Carrier to assign employees to a different class of work on a seniority basis.

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 Carrier did not violate the Agreement.

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 September 1970.