



Award No. 18323
Docket No. CL-18613

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6698) that:

1. The Carrier violated the Clerks' Agreement at Oakland, California, when it established Position No. 854, Checker-Janitor, with assigned hours of 4:00 A. M. to 1:00 P. M.
2. Carrier shall now compensate employe N. B. Stephenson, regularly assigned occupant of Position No. 854, for two (2) hours at the punitive rate of pay of his position commencing September 1, 1968 and each day thereafter until violation was discontinued.

EMPLOYEES' STATEMENT OF FACTS: The Carrier has maintained 3 shifts working around the clock for the performance of work in connection with opening car doors and preparing sugar cars for loading at Oakland Mole.

This position, Checker-Janitor, was established with assigned hours of 4:00 A. M. to 1:00 P. M. (Employees' Exhibit No. 1) and assigned to Mr. N. B. Stephenson.

Mr. Stephenson filed a Statement of Overtime claim on September 19, 1968 and the claim was denied by Timekeeper on October 8, 1968. (Employees' Exhibits No. 2 and No. 3.)

The claim was then appealed to Superintendent J. C. Luser on December 3, 1968 and declined on December 18, 1968. (Employees' Exhibits Nos. 4 and 5.)

Claim appealed to Manager of Personnel, W. A. Tussey on January 31, 1969. (Employees' Exhibit No. 6.)

Claim was discussed in conference March 4, 1969 and subsequently declined March 17, 1969. (Employees' Exhibit No. 7.)

(Exhibits not reproduced.)

Exhibit B). Attached as Carrier's Exhibits C, D, E, F, G and H are copies of the correspondence in connection with the progression of the instant claim on the property.

Copy of the controlling agreement between Carrier and the Brotherhood of Railway Clerks, effective December 16, 1943, Revised September 16, 1965 is on file with the Third Division, National Railroad Adjustment Board and is hereby incorporated herein by reference. Rule 16 of said Agreement is quoted below for your Board's ready reference.

"RULE 16.

Where three consecutive shifts are worked covering the 24-hour period, no shift shall have a starting or ending time after 12 o'clock midnight and before 6:00 A. M.

Except where necessary to meet the requirements of service, no other shift shall have a starting or ending time after 12 o'clock midnight and before 6:00 A. M."

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner alleges a violation of Rule 16 of the applicable Agreement, which reads:

"Where three consecutive shifts are worked covering the 24-hour period, no shift shall have a starting or ending time after 12 o'clock midnight and before 6:00 A. M.

Except where necessary to meet the requirements of service, no other shift shall have a starting or ending time after 12 o'clock midnight and before 6:00 A. M."

The position involved is that of checker-janitor at Oakland Mole, with assigned hours of 4:00 A. M. to 1:00 P. M., which hours the Carrier contends are necessary to meet service requirements and are permissible under the second paragraph of the above-mentioned rule.

The Petitioner contends that Carrier has maintained three shifts working around the clock for the performance of work in connection with opening car doors and preparing sugar cars for loading at Oakland Mole. The Carrier denies such contention, stating that at no time in over forty years of operation of the sugar dock has it ever maintained a three-shift operation for the performance of work in connection with sugar loading, and that work in connection with sugar loading has always been performed solely on one shift a day, five days a week.

It is well settled that in proceedings before this Board it is essential that the Petitioner prove all essential elements of its claim and that mere allegations and assertions are not proof (Award 17954).

The Petitioner has not presented probative evidence in support of its contention. We will, therefore, dismiss the claim for failure of the Petitioner to meet its required burden of proof.

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 claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.