

Award No. 18343
Docket No. CL-18519

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

TIDEWATER SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6677) that:

1. That Carrier violated the rules of the Agreement extant between the parties when it failed to call Mr. O. S. Correa to transport a train and engine crew from Turlock, California to Manteca Junction on July 21, 1968 and improperly permitted and/or required junior clerk J. R. Hansen to perform this overtime work.

2. Mr. O. S. Correa shall now be allowed 8 hours at the overtime rate.

EMPLOYEES' STATEMENT OF FACTS: On date of July 21, 1968, J. R. Hansen, Clerk at Turlock worked from 8:30 A.M. to 5:30 P.M. on his regular assignment. On or about 8:00 P.M. of the same day, a train and engine crew required transportation from Turlock to Manteca Junction in order to pick up their train, engine and caboose. Mr. O. S. Correa, Chief Clerk at Modesto with assigned hours of 8:00 A.M. to 5:00 P.M. had completed his tour of duty on the same day. The carrier called Mr. Hansen (seniority date 7/20/59) who is junior to Mr. Correa (seniority date 1/22/48) to perform this overtime service. The work of transporting crews has been performed in the past by Chief Clerk Correa. They are part of his assigned duties.

Claim was filed with the timekeeper for 8 hours at the overtime rate and was declined on July 25, 1968, Employees' Exhibit "A."

Claim was thereafter appealed by General Chairman James to Superintendent H. J. Mulford through his letter of September 19, 1968, Employees' Exhibit "B."

Superintendent H. J. Mulford declined the claim through his letter of November 12, 1968, Employees' Exhibit "C."

Claim was then appealed to Mr. W. A. Tussey, Manager of Personnel, the highest office of the Carrier authorized to handle claims on the property,

through the General Chairman's letter of December 20, 1968, Employees' Exhibit "D." Claim was thereafter discussed in conference on January 21, 1969 and declined through Mr. W. A. Tussey's letter of January 24, 1969, Employees' Exhibit "E."

Having failed to resolve the dispute on the property, it is respectfully referred to your Honorable Board for adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Carrier's main line extends from Stockton yard, Milepost 0.0 to Turlock, California, Milepost 47.9. At Modesto, Milepost 31.6, a station office force is maintained which includes the following:

Position	Incumbent	Hours	Rest Days
Agent	D. D. Goderum	8:30 A. M. - 5:30 P. M.	Sat. - Sun.
Chief Clerk	O. S. Correa	8:00 A. M. - 5:00 P. M.	Sat. - Sun.

At Turlock, California, Milepost 47.9 a station office is maintained which includes the following:

Position	Incumbent	Hours	Rest Days
Agent	L. A. Hupp	8:00 A. M. - 5:00 P. M.	Sat. - Sun.
Bill Clerk	J. R. Hansen	8:00 A. M. - 5:00 P. M.	Mon. - Tues.

The positions of Agent, Chief Clerk and Bill Clerk, Modesto and Turlock, are subject to the Agreement between Carrier and the Brotherhood of Railway Clerks and all of the employees are represented by the Brotherhood of Railway Clerks.

On Sunday, July 21, 1968 at 8:00 P. M., it was necessary to transport a local freight crew by Company auto from Turlock to Manteca Junction, Milepost 5.2. Clerk J. R. Hansen at Turlock, the originating point of the work, was called to drive the vehicle used to transport the local freight crew.

Mr. O. S. Correa submitted the instant claim on July 25, 1968 and as Chief Clerk denied the claim on the same date. The instant claim was then appealed to Mr. H. J. Mulford, Superintendent (by the General Chairman) on September 19, 1968 (Carrier's Exhibit "A") and denied by Mr. Mulford on November 12, 1968 (Carrier's 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 January 1, 1966 is on file with the Third Division, National Railroad Adjustment Board and is hereby incorporated herein by reference.

(Exhibits not reproduced.)

OPINION OF BOARD: A junior clerk at Turlock instead of Claimant, Chief Clerk at Modesto, was called to transport a train crew from Turlock

to Manteca Junction. Employees contend that transporting crews was an assigned duty of Claimant. In a letter dated March 24, 1969 the General Chairman conceded that Hansen did on one prior occasion transport operating crews from Turlock.

The record shows that on all dates when the Claimant transported operating crews the trip commenced at Modesto where the Claimant was stationed. There is no evidence that he ever transported such crews where the trips started at Turlock. On the other hand the record also shows many dates when Hansen transported operating crews on trips that originated at Turlock.

Seniority rights exist only as provided for in an agreement. Claimant had no vested seniority rights entitling him to transport operating crews. Certainly none where such transport originated at places other than Modesto. Claimant was not deprived of his seniority rights to overtime as alleged.

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 17th day of December 1970.