

Award No. 18955
Docket No. CL-19084

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6868) that:

(a) Carrier violated rules of the Clerks' Agreement when on Saturday, September 23, 1967, it failed to assign a senior clerk available and qualified employee to overtime work; and,

(b) L. E. Meinhardt shall now be paid eight (8) hours at the rate of time and one-half his regular rate of \$24.4255 per day as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: Claimant L. E. Meinhardt is an employe of the Carrier with a Group 1-2 seniority date of June 16, 1952, on the Auditor of Passenger Accounts Seniority District at Topeka, Kansas. On the date here involved, Claimant was the regular assigned occupant of Inter-system Audit Position No. 202 with a daily rate of pay of \$24.4255 per day.

Prior to and on September 23, 1967, there existed in the Auditor of Passenger Accounts, Topeka, Kansas, Position 382 Statistics, rate \$23.8270 per day regular occupant H. W. Heineken. This position is assigned the duties of condensing Intrastate Revenues by States, work and prepare various statements for the Chicago Office, maintain punch cut records and to compile on mimeograph Form 176 monthly data of revenue from milk and cream shipments for certain trains, mainly 47-48, 211-212, 13-14, 191-190 and 201-200. Compiling the data on milk and cream represents a minor portion of the assignment of Position 382 requiring only an average of four (4) hours per month.

On or about September 20, 1967, the Carrier had need for information which would reflect milk and cream revenues for the trains normally worked by Position 382 and in addition, for trains 23-24, 7-8 and 3-4 for the years 1965, 1966 and January through June of 1967. The time element involved and the additional information required made it necessary for the Carrier to perform some of the work on Saturday, September 23, 1967.

NOTE: This principle shall also apply to working on holidays."

(Exhibits not reproduced.)

OPINION OF BOARD: On or about September 20, 1967 Carrier had need for information which would show, inter alia, milk and cream revenues for the trains normally worked by Position 382, held by H. W. Heineken, and in addition for certain other trains for 1965, 1966 and the first half of 1967.

A pressing time requirement, and the quantity of information needed, made it necessary to have some of the work done on Saturday, September 23, 1967.

A pressing time requirement, and the quantity of information needed, made it necessary to have some of the work done on Saturday, September 23, 1967. The regular statistics clerk, Mr. Heineken, needed assistance and three clerks, Zechel, Chilcoat and McClenney were assigned to help Mr. Heineken and performed the work September 20, 21, 22 and 23, 1967.

This dispute is about the overtime work given on Saturday, September 23, 1967 to Zechel and Chilcoat, who are junior to Claimant.

Claimant L. E. Meinhardt contends that Carrier violated rules of the Clerks' Agreement when it failed to assign him, a senior clerk, to the Saturday overtime work.

On Friday, September 22, 1967, Claimant sent a note to Mr. Sellards, Auditor of Passenger and Agency Accounts stating:

"Please accept this as my request to protect any position on overtime basis under rule 32-G section 2 of the Clerks Agreement."

For the sake of clarity, the text of Rule 32-G is set forth below:

"32-G. In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e.:

(1) Occupant of position to have prior rights to overtime work on his position.

(2) If more than employee is regularly assigned to a class of work, the senior available employee in that class of work will have prior rights to the overtime work.

(3) If none of the employees are available as provided in (1) and (2) above, the senior available qualified employee at the point who has served notice in writing of his desire will then have prior rights to the overtime work.

NOTE: This principle shall also apply to working on holidays."

The Organization contends that M. W. Heineken was the only employee regularly assigned to perform the work in question and that therefore Section (3) of Rule 32-G is controlling. 32-G (3) provides that if none of the employees are available as provided in 32-G (1) or 32-G (2), the senior available qualified employee at the point who has served notice in writing of his desire will then have prior rights to the overtime work.

The Organization argues that Claimant was senior to two of the employees used on Saturday, September 23, 1967, was qualified and had served notice in writing of his desire to work and his rights to the overtime work.

Carrier submits that 32-G (3) is not applicable because the overtime work was performed on Saturday, "neither before or after assigned hours" and "no employee had a request in writing to work overtime under that Section of Rule 32-G." The reference of the Carrier is to the language at the beginning of 32-G which states:

"In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e. * * *

Carrier further contends that the overtime work was performed "during the assigned hours of the regular employees' work week * * * this time worked was not * * * before or after assigned hours."

The Carrier seems to be stating in effect that the hours between 8:00 A. M. and 5:00 P. M. on Saturday, an unassigned day, constitute assigned hours on an unassigned day.

The fact that the overtime work was performed on an unassigned day during the 8:00 A. M. to 5:00 P. M. period (the same hours that are worked during the regular weekly work days) does not bar the application of Rule 32-G (3). The overtime work was performed before the assigned hours of Monday, September 25, 1967 and after the assigned hours of Friday, September 22, 1967.

Although Claimant had served notice in writing of his desire to work the overtime, Carrier states in substance that the request in writing is invalid with respect to 32-G (3) because the note of Claimant mentioned only 32-G (2) in seeking to protect his overtime rights.

When Mr. Sellards, Auditor of Passenger and Agency Accounts, questioned the intent of Claimant's request in writing, Claimant informed him that he was aware that it would be necessary to perform some overtime work on duties normally assigned to the occupant of Position 382, that some of these employees to be used for that work were junior to him in seniority and the note was his request to work the overtime as provided by Agreement Rules.

This Board feels that the Carrier was well aware of Claimant's desire to protect his rights to overtime and that it may not rely on a technical error in the note written by Claimant who is not expected to be an absolute master of rules upon the interpretation of which the best representatives of Carrier and Organization cannot agree.

We are of the opinion that since Claimant served notice in writing of his desire to protect any position on an overtime basis, under the terms of Rule 32-G (3) he had prior rights to the Saturday overtime work which was given to two employees who are junior to him.

In view of the foregoing, the claim is allowed.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated the Agreement.

AWARD

Eight (8) hours of pay to Claimant at the overtime rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1972.