

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19653
Docket Number CL-18985

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station Employees
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6829)
that:

1. The Carrier violates and continues to violate the Rules of the Clerks' Agreement at MK Yards when, beginning October 1, 1968, it required and/or permitted employees not covered by the Clerks' Agreement to perform routine yard clerical work that is covered by the Clerks' Agreement, on an overtime basis.

2. Carrier shall now be required to compensate Clerk R. L. Austin, at pro rata rate of pay, for all overtime worked by employees not covered by the Clerks' Agreement performing routine yard clerical work, beginning October 1, 1968 and each subsequent day thereafter until the violation is corrected.

Note: A joint check of station payroll records and copies of overtime slips to be made by the parties to determine overtime worked.

OPINION OF BOARD: This dispute arises under Agreement between the parties effective September 1, 1949. Third party notice has been given to the Transportation-Communication Division of the Brotherhood of Railway, Airline, and Steamship Clerks; however, the T-C Division has not filed a submission.

This dispute is the same dispute which was considered and determined in the Board Opinion sustaining the claim in Award 19651. The only differing element is that the amount of work and claim dates involved were known in Award 19651, whereas that information is not available in this Docket.

In the handling on the property the Carrier took the position that the herein claim was invalid "as the amount of time claimed is not stated." We find no substance in this position inasmuch as in the very early stages of this claim the claimant, in a November 7, 1968 letter to a Carrier official, stated that:

"I am unable to list hours claimed each day account the Agent MK Yards refusing to make payroll records available to me.

However, a check of the payroll will clearly establish hours claimed, each day, account Agent performing clerical work on an overtime basis."

Additional information concerning the reason for not listing the hours claimed is contained in the October 23, 1969 letter of General Chairman T. G. Brown to Mr. O. B. Sayers, Director of Labor Relations, which, in pertinent part, stated:

"We are at a complete loss in trying to understand the statements made in paragraph two (2) of your above mentioned letter.

In the first sentence, paragraph two (2), you state -

'It is the position of the Carrier that this claim is invalid as the amount of time claimed is not stated.'

The above was fully discussed with the General Manager and he was advised that just as soon as the first claim was filed by Austin, regarding this same situation, the Agent at MK Yard deliberately locked up the payroll record and refused to allow Austin to even examine the payroll record. If you will refer to your file 280-650 which covers an identical claim filed prior to October 1, 1968, you will find that the Employees were clearly able to state the time claimed.

Due to the Agent acting in such an arbitrary manner and evidently wishing to hide the facts and/or the amount of clerical overtime he was working, we requested by letter November 25, 1968 to the General Manager, and in conference July 16, 1969, that a joint check be made, to determine the amount of clerical overtime being made by the Agent. The General Manager did not agree to a joint check.

Furthermore, we advised your office in our letter of August 15, 1969, in part - 'a joint check of the payroll can easily be made to determine the time involved.' Therefore, the Employees respectfully request that a joint check by the parties be made to determine the time involved each day."

In the claim submitted herein the Petitioner expressly requests a joint check of station payroll records and copies of overtime slips to be made by the parties to determine overtime worked by the Agent at MK Yards, near Houston, Texas. And finally, Carrier itself, in its submission acknowledged that the Docket previously decided, Award 19651, covers the period July 29-September 30, 1968 and that the "instant dispute covers the same factual situation starting October 1, 1968 on a continuing basis."

The record as a whole shows that this dispute is the same dispute which we decided in Award 19651. The information pertaining to an award of compensation, though available in that docket, is not available in the record of this docket. Thus, in this case, we must perfect the Award we have already rendered in Award 19651. Petitioner's claim seeks a joint payroll check as the means to achieve this purpose and Carrier has not raised any objection of record to such a check. Furthermore, since there were only two employees at the involved station during the claim period, we cannot conceive of any facts that would make a joint check an undue burden on Carrier. Consequently, and in conformity with our Award in 19651, we sustain the claim herein and further sustain the Petitioner's claim for a joint check of station payroll records and copies of overtime slips to be made in order to determine the amount of compensation to be paid claimant by Carrier for the claim dates covered by this claim. See Awards 14186 (Dolnick) and 16067 (House).

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 Agreement was violated.

A W A R D

Claim sustained in accordance with Opinion in Award 19651. Claim for joint check of payroll records sustained in accordance with Opinion herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killum
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.