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AWARD NO. 10
NRAB DOCKET NO. CL-8261
CASE NO. 9
SSW FILE R-51-711-65
BRC FILE NR-27-11

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES } The Brotherhood of Railway and Steamship Clerks
TO }
DISPUTE } St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier violated the current Clerks' Agreement Saturday, May 1, 1954, when it failed to call Mr. George Raney, Florida Street Station, St. Louis, Missouri, for a vacancy on Relief Foreman A position, 8:00 A.M., to 5:00 P.M.

(2) That Mr. Raney be paid the difference between what he was paid and the rate of pay of the Foreman position for May 1, 1954.

FINDINGS: Claimant here was the senior extra man being used in Group 1. He had worked as Check Clerk on the preceding date from 8:30 AM to 4:30 PM. A temporary vacancy as Foreman became available starting at 8:00 AM and a regularly assigned Check Clerk was advanced to fill such vacancy. Claimant here had worked one shift within the twenty-four hour period and under the agreement on this property, if he had been worked he would have been entitled to thirty minutes at penalty rate account going to work thirty minutes prior to the expiration of the twenty-four hour period.

The real difference between the parties is whether or not claimant was available for service. He had worked one shift within the twenty-four hour period prior to the starting time of the job for which the claim is made, which would have made it necessary for the Carrier to pay him penalty rates of pay for a part of the shift for which he is making claim. That brings up a much discussed question as to whether or not the Carrier is required to use a man and pay him penalty rates of payment when another employee is available at straight time rates. That goes back to the origin and history of penalty rates of payment. Penalty rate payments have always been argued for by the Organizations as not a right of the employees but as a prohibition against the carriers using men more than the prescribed hours in their assignments. Raney had no right as a right to claim a job that would pay him penalty rates of payment and the Carrier's position in avoiding the payment of penalty rates by using another employee who is entitled to the work has always been protected and that penalty payments should only be paid when the Carrier uses a man in excess of the time the agreement provides for their normal use.

In the instant case, under the agreement, this claimant was not available at straight time rates and was, therefore, not available for service under the interpretation of the agreement and the Carrier was privileged under the provisions of the agreement to use the man they used instead of using the claimant in this case.

Award No. 10

AWARD: Claim denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member

/s/ L. C. Albert.
L. C. Albert, Carrier Member

(I dissent based on Award 7375.)

Tyler, Texas
March 15, 1957.