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AWARD NO. 13
CASE NO. 13

SPECIAL BOARD OF ADJUSTMENT NO. 174

PARTIES The Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
TO

DISPUTE The Atchison, Topeka and Santa Fe Railway Company

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

(a) Carrier violates the rules of the Clerks' Agreement at Arkansas City, Kansas, when it assigns a rest day relief position in a manner described below, resulting in its occupant performing work in excess of eight (8) hours in a period of twenty-four (24); and,

(b) Ruth I. Lasater shall now be paid the difference between time and one-half and the straight time she was allowed for the hours 3:45 p.m. to 11:45 p.m. on each Tuesday beginning March 10, 1953 and until violation is corrected.

FINDINGS: Special Board of Adjustment No. 174, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

Claimant held a regular relief position assigned Sunday Monday 11:45 PM to 7:45 AM and Tuesday Wednesday Thursday 3:45 PM to 11:45 PM. Thus, on the day starting Monday at 11:45 PM and ending Tuesday at 11:45 PM, she was assigned to work two noncontinuous eight hour periods: eight hours on duty followed by eight off followed by eight on. The claim is that the second of these tours of duty should have been paid at time and one-half instead of straight time.

Article VI Section 1 of the Agreement reads:

"Except as otherwise provided in these rules, eight (8) consecutive hours work, exclusive of the meal period, shall constitute a day's work."

Article VII Section 1-a of the Agreement reads:

"Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, continuous with and outside of regular assigned hours, on any day, will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

The adoption of the National Forty-Hour Week Agreement added the following paragraph in Article III Section 10-e of the Agreement which reads:

"Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

The first Agreement between the parties was executed effective October 1, 1942 and it incorporated the overtime rule (Article VII Section 1-a) which had been in effect on the property for many years. The fact that this rule contained the unusual qualifying language "continuous with and outside of regular assigned hours," coupled with the existence of manpower shortages in 1942, led to the adoption by the parties of two Letters of Understanding, one dated December 9, 1942 and the other April 15, 1943.

The Letter of Understanding of December 9, 1942, which is still in force, is not relied upon by the Organization in the statement of position in its submission. We therefore express no opinion on the meaning and effect of this Letter of Understanding.

The Letter of Understanding of April 15, 1943, which was cancelled by mutual agreement upon the adoption of the National Forty-Hour Week Agreement, so far as pertinent reads:

"(5) Incumbents of regular relief assignments are 'necessary to the continuous operation of the Carrier' under Article VIII and will take the rate of pay and assigned hours of each employee relieved, but will be assigned in such a way as to afford the incumbents thereof at least eight (8) hours off duty between work periods; the provisions of Section 1, Article VII not being applicable when, in following their assignments from position to position, incumbents of such relief positions work more than eight hours on any day."

It is the thought of the Organization that the overtime rule requires the payment of time and one-half for all work in excess of eight hours on any day, whether continuous with and outside of regular assigned hours or not; that paragraph 5 of the Letter of Understanding above quoted constituted an exception to the overtime rule; and that, upon cancellation of the Letter of Understanding, the overtime rule came into play as the Organization interprets it.

First. While paragraph 5 of the Letter of Understanding expressly excludes any possible application of the overtime rule to the specific situation the parties were dealing with, we are unable to view it as an agreed-upon interpretation of the overtime rule. It did not purport to be an interpretation; and if it was, it was deliberately cancelled upon the adoption of the National Forty-Hour Week Agreement.

We conclude that the claim must stand or fall on the overtime rule as written.

Second. There are overtime rules, unlike the overtime rule in this Agreement, that require the payment of time and one-half for all time worked in excess of eight hours on any day (see Awards 687, 2030 and 2349 relied upon by the Organization).

The overtime rule in this Agreement, however, contains the additional qualifying words "continuous with and outside of regular assigned hours." The position of the Organization denies all meaning and effect to these qualifying words.

Claimant's assignment with different starting times was a permissible assignment under the rules; and, while she worked more than eight hours on the day starting Monday at 11:45 PM, the time under claim here was neither continuous with nor outside her regular assigned hours.

It seems to us that any other conclusion involves our amending the plain terms of the overtime rule as the parties found it expedient to do in their various Letters of Understanding as changing conditions and circumstances warranted. This, of course, we have no authority to do.

We conclude that Article VII Section 1 (now Section 1-a) means what Award 4201 said it meant in the absence of some controlling amendatory agreement or understanding between the parties.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ F. D. Comer
Carrier Member

/s/ W. Ray Clark
Employee Member

Dated at Chicago, Illinois, October 7, 1959.