

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES: BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 9

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

- (1) Carrier violated the Agreement on the freight platform at Dayton, Ohio, when it failed to call the senior regular tallymen and truckers for overtime opportunities preceding their regular starting time on January 7, 1954 and subsequent dates, and
- (2) Effective January 7, 1954, and continuing in effect until such time as this grievance is properly adjudicated, all regular employes affected be compensated for all wage loss sustained due to the above-mentioned violation of the Clerks' Agreement, and
- (3) That a joint check of the Carrier's records be made by the parties for the purpose of ascertaining the extent of the violation on January 7, 1954 and subsequent dates.

FINDINGS:

On January 7, 1954 the regularly assigned freight platform forces at Dayton, Ohio, consisted of one tallyman and two truckers hours 5:00 A.M. to 2:00 P.M., and two tallymen and six truckers, hours 8:30 A.M. to 5:30 P.M.; later another tallyman was assigned to the 8:30 A.M. force. Generally, on Mondays and Thursdays, extra gangs were started at 5:00 A.M. and occasionally performed service in excess of eight hours.

This claim is based on the assertion that under Rule 4(b-1) the regularly assigned employes should have been called to perform the overtime work and that under Rule 10(c) the extra men were only entitled to work either four or eight hours.

The two involved rules read as follows:

- 4(b-1) "When it is necessary to work overtime before or after assigned hours, employees regularly assigned to the position on which overtime is worked will be given preference."
- 10 (c) "Additional platform forces (including additional forces necessary to be worked in the Mail and Baggage Department at the Grand Central Station, Chicago, Ill.) may be worked to take care of

fluctuating work, if necessary, on either a four or eight hour basis. Employees worked on the four hour basis will be paid a minimum of four hours for each tour of duty of four hours' work, or less; if held on duty in excess of four hours, they will be paid a minimum of eight (8) hours. If worked in excess of eight hours, the regular overtime rate as provided in Rule 4 of this agreement will apply."

It is clear that the extra men who worked with the 5 A.M. to 2 P.M. gang performed no more overtime than the regularly assigned men on that gang. It is also clear that the gangs assigned 8:30 A.M. to 5:30 P.M. did not work any overtime beyond 5:30 P.M.

It is apparent that the parties recognized that occasion would arise when extra men would be required to work overtime since they provided for the method of payment to them when they are worked in excess of eight hours. Consequently, it cannot be said that the extra men are only entitled to work either four or eight hours as contended by the employees.

It appears that the necessity for the overtime performed arose after 2:00 P.M. While it is contended by the employees that the work could just as well have been done between 5 A.M. and 8:30 A.M. by the regular men assigned 8:30 A.M. to 5:30 P.M. there is no showing that at sometime on the evening before the Agent could anticipate or could be reasonably expected to anticipate that the work on the next day would run into overtime. Clearly, if he could have so anticipated, under Rule 10(c), he would have called additional extra platform forces and accomplished the work required at the pro rata rate. Obviously, the regular men here claiming were not available for overtime from 2 P.M. to 5:30 P.M. for they were then working their assigned hours. It follows that there is no basis for a sustaining award.

AWARD

Claims (1), (2) and (3) denied.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

E. J. Hoffman
Employee Member

/s/ T. S. Woods
Carrier Member

Dated at Baltimore, Md. this
13th day of January 1959.