

ORG. FILE 8-43
CARRIER FILES D-2661, D-2662, D-2663, D-2664,
D-2665, D-2666, D-2680, D-2681
NRAB FILE CL-9365

AWARD NO. 16
CASE NO. 16

SPECIAL BOARD OF ADJUSTMENT NO. 194

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

DISPUTE St. Louis-San Francisco Railway Company

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

CLAIM I

A. The Carrier violated the terms of the currently effective Agreement between the parties when on December 8, 9, 15, 22, and 23, 1955 it used an employee, who holds no seniority or other rights under the Clerks' Agreement, to perform extra work to which an employee covered by the Agreement was entitled to perform on overtime by reason of his seniority.

B. Oby W. Jones, Stowman, now be allowed eight hours at over-time rate for each date December 8, 9, 15, 22, and 23, 1955, account this violation.

CLAIM II

A. The Carrier violated the terms of the currently effective Agreement between the parties when on December 10 and 11, 1955, it used an employee junior to the claimant to perform extra work on rest days of claimant at a time when claimant was available.

B. J. C. Williams, now be allowed one day's pay at time and one-half on December 10 and 11, 1955, account this violation.

CLAIM III

A. The Carrier violated the terms of the currently effective Agreement when on various dates shown in Part B of this claim, it used employees outside the hours of their regular assignment and on rest days to perform work and refused to pay them the overtime rate for work performed.

B. Oby W. Jones, Stowman, now be paid the difference between pro-rata time and time and one-half for eight hours December 16 and four and one-half hours December 17 for service performed outside his assigned hours.

W. L. Curtis, Check Clerk, now be paid the difference between pro-rata rate and time and one-half for eight hours each, December 16, 17, 18, 23, 24, six hours each December 20 and 21, and seven hours December 22, for service performed outside his assigned hours and on his rest days which were December 17, 18, and 24, 1955.

L. H. Ligon, Trucker, now be paid the difference between pro-rata rate and time and one-half for eight hours December 17, six hours December 18, four and one-half hours December 20, and four hours December 21, for service performed outside the hours of his assignment and on rest days which were December 17 and 18, 1955.

G. W. Kingcade, Trucker, now be paid the difference between pro-rata rate and time and one-half for eight hours each December 10, 11, 17, and 18, for service performed on his rest days on his regular assignment,

R. B. Bigger, Trucker, now be paid the difference between pro-rata rate and time and one-half for eight hours each December 17 and 18, and four hours December 19, for service performed outside his assigned hours and on his rest days which were December 17 and 18, 1955.

J. T. Maloy, Stowman, now be paid the difference between pro-rata rate and time and one-half for nine hours December 17, for service performed on his rest day.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

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

This Special Board of Adjustment has jurisdiction over this dispute.

The passenger station and facilities at Oklahoma City are jointly operated by the Frisco and the Rock Island, each carrier acting as the operating company for alternating five year periods. Persons employed in the joint operation are selected, so far as practicable in equal numbers from the employes of each carrier.

As of December 1, 1956 the regular mail and baggage handling force consisted of six Frisco positions and five Rock Island positions. Beginning December 3 1955 and ending December 24 1955, the Frisco, as the operating company, supplemented the regular mail and baggage force to handle the Christmas mail rush by creating 33 extra positions, divided 16 Frisco and 17 Rock Island. The extra positions created were Rock Island baggage helper positions and Frisco baggage trucker positions.

To fill these extra positions the Carrier made indiscriminate use (insofar as the Clerks' Agreement is concerned) of clerks, employes from other branches of the service such as switchmen, engineers and so on, and in addition, city firemen and men from other walks of life. This was done in accordance with an established Christmas practice prevailing over the preceding 15 years.

On December 14 1955 the Division Chairman of the Organization advised the Station Master that the Clerks claimed a preferential right to this extra work and that any clerks who performed the work on overtime claimed the right to pay at the rate of time and one-half.

All of the claims listed under Claim III are for the difference between the pro rata rate and time and one-half; and each claim involves the performance of overtime work after December 14 1955 except two days (December 10 and 11) claimed by Claimant G. W. Kingcade.

The claims listed under Claim I are for work not performed but first claimed by the Claimant Oby W. Jones himself on December 14 1955. He was advised by the Station Master on December 15 that he could perform the work at the pro rata rate.

The claims listed under Claim II are for work not performed but first claimed by the Claimant J. C. Williams himself on December 9, 1955. He was advised by the Station Master on December 10 that he could perform the work at the pro rata rate.

First. Claimants had a preferential right to this work by virtue of the Scope, Seniority and Overtime Rules of the Agreement; and the Carrier violated the Agreement by giving the work to outsiders without first offering it to those entitled under the Clerks' Agreement.

Second. There is nothing uncertain or ambiguous about these Rules. It follows that while contrary past practice cannot abrogate the Rules or graft Christmas exceptions on them, established past practice may bar time claims based on past violations. Either party may at any time require that the practice be stopped and the Rules applied according to their terms. This the Claimants did in Claims I and II on December 14 and 9 respectively; and this the Organization did generally on December 14 1955.

Third. Certain of these claims relate to the performance of work on rest days and are based on Rule 44 (b), the meaning and application of which is in dispute. The dispute has been submitted to the Forty Hour Week Committee. Insofar as any of the claims before us are based on Rule 44 (b), they should be held in abeyance pending decision by the Forty Hour Week Committee.

On familiar principles the claims listed in Claims I and II should be sustained at the pro rata rate rather than at the rate of time and one-half, since the Claimants did not actually work overtime.

A W A R D

Claim I sustained at the pro rata rate except denied as to December 8 and 9 1955.

Claim II sustained at the pro rata rate.

Claim III sustained except denied as to the claims of Claimant: G. W. Kingcade for December 10 and 11.

This award does not finally adjudicate any of the foregoing claims which are based on Rule 44 (b); such claims are remanded for final disposition in accordance with the decision of the Forty Hour Week Committee and this award.

/s/ T. P. Deaton
Carrier Member

/s/ Hubert Wyckoff
Chairman

/s/ F. H. Wright
Employee Member

Dated at St. Louis, Missouri August 1, 1958