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SPECIAL BOARD OF ADJUSTMENT NO. 167

AWARD NO. 2

Organization's File

105-A-7

Carrier's File

CL-17-54

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The Clerks' Agreement was violated and continued to be violated when the Carrier assigned or permitted the Agent at Minturn, Colorado, who does not come under the provisions of the Clerks' Agreement, to perform work that rightfully belongs to employees covered by the Clerks' Agreement.

"(2) Mr. John J. Wedding shall be compensated for forty-four hours and thirty-five minutes at the rate of time and one-half for the period April 18, 1953 to October 7, 1953, account Carrier's action in violation of rules of our Agreement.

"(3) Mr. Gary T. Willingham shall be compensated for fourteen hours and thirty minutes at the rate of time and one-half for the period April 23, 1953 to October 13, 1953, account Carrier's action in violation of rules of our Agreement.

"(4) Mr. John J. Wedding or Mr. Gary T. Willingham be compensated at the rate of time and one-half for each day subsequent to dates above stated that similar violations occurred until April 11, 1954."

FINDINGS: At Minturn, Carrier employed a working Agent under the Telegraphers' Agreement and three Telegraphers on round-the-clock basis. The number of clerical employees varied. For several years, there was only one; then two; then three; and at times none at all.

In early 1952, there were two clerical employees. From March 1 to April 11, a third clerk was assigned. Thereafter, the third clerk's position was abolished and at least a part of the third shift work was performed by the two remaining clerks on an overtime basis until April 18, 1953 when the work had decreased to such extent that when no clerk was on duty the Agent and Telegraphers performed the work in addition to their assigned duties

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during their regular tour of duty and the clerks were no longer held to perform it on overtime.

The work here complained of was largely that of making out reports; it was largely incidental to agent's and telegrapher's assigned duties and was performed in close proximity to their assigned post. The telegraphers and the working agent under the Telegraphers' Agreement could properly be required to fill out their assigned time at such work.

Employes complain that Carrier violated Rule 41 in that as to part of the claim, claimant was not notified in writing of the reason for its disallowance. Rule 41 is not a penalty rule; no loss or delay or disadvantage appears to have resulted for its violation. In view of long acquiescence in disregarding the rule, it is sufficient that immediately upon request Carrier stated the reasons for the disallowance.

AWARD: Claim denied.

/s/ Mortimer Stone
Mortimer Stone
Chairman, Neutral Member

/s/ D. L. Clavel
D. L. Clavel
Carrier Member

Wm. J. Donlon
Organization Member