Award No. 53
Docket No. CL-9581

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Carrier violated Rules of the Clerks' Agreement at Vicksburg, Mississippi, when on March 19, 1956, it failed and refused to recognize Clerk J. K. Levi's right to fill vacancy on position No. 66.

(b) J. K. Levi be compensated for wage losses sustained representing a day's pay at the punitive rate on March 19, 1956. (Pro rata rate of position No. 66, $16.73 per day)

(c) R. J. Farris be compensated eight hours' pay at the punitive rate on March 19, 1956, less what he was paid for work performed on that date.

OPINION: There are employed in the Yard Office at Vicksburg, Mississippi, a force of employes who perform the clerical work incidental to the operation of the Terminal. The employes involved in the instant dispute, their hours of service and rest days are as follows:

No. 66	Chief Yard Clerk - Wright	7:59 a.m. to 3:59 p.m.	Mon. through Fri.
No.529	Yard Clerk - Levi	7:59 a.m. to 3:59 p.m.	Wed. through Sun.
	Unassigned Clerk - Farris		

On Monday, March 19, 1956, Wright was absent from his assignment, and the vacancy was filled by unassigned Clerk Farris who had worked position No. 73, 3:00 p.m. to 11:00 p.m. on March 18. Claim was filed on behalf of Farris for the difference between pro rata and punitive rate on March 19. Also claim was filed on behalf of Levi for eight hours' pay at punitive rate on March 19.

It is the position of the Employes that Claimant Levi, the senior clerk, off duty and available, was denied the opportunity to perform work on a short vacancy, the filling of which involved compensation at the punitive rate of pay, and Claimant Farris was required to start his second tour of eight continuous hours of work, sixteen hours and fifty-nine minutes after the starting time of his previous assignment for which he was compensated seven hours at the punitive rate and one hour at the pro rata rate. It is also the position of the Employes that on the day herein involved, the extra employe (Farris) had been used for eight hours for which he was compensated the pro rata rate of position No. 73, and Farris having worked eight hours in his work day and Levi having worked five days in his work week, both became available for work at the punitive rate under the overtime provisions of the agreement. Since both were available under the agreement with Levi being the senior, by virtue of Rules 4 and 6, Levi had the right

to exercise his seniority to the vacancy on Chief Clerk's Position No. 66.

It is the position of the Carrier that no rules of the agreement require an extra clerk to take sixteen hours off duty between assignments, nor is there any existing practice on the property which would place limitations on the rights of extra clerks to work as provided in the rules of the agreement.

Carrier also urges that Levi's claim should be dismissed for the reason that Farris, an unassigned employe, was available because he had not worked forty hours in his work week. It appears that on the day involved Farris had been used for eight hours on Position No. 73 for which he was compensated at the pro rata rate, and Levi had worked five days in his work week. Both became available for work at the penalty rate under the overtime provisions of the agreement.

Decision in this case is based upon the fact that the work performed was on an assigned day. Carrier relies upon Award No. 7375, but the principle involved there relates to work on an unassigned day. The above award is not controlling in the case at bar.

We hold that both Levi and Farris became available for work at the penalty rate under the overtime provisions of the agreement. Levi, being the senior employe, had the right to fill the vacancy. The Carrier violated the rules of the agreement when it assigned Farris to a position that Levi was entitled to.

FINDINGS: The Special Board of Adjustment No. 170, after giving to the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the agreement was violated.

AWARD: Claim sustained, at pro rata rate.

SPECIAL BOARD OF ADJUSTMENT NO. 170

/s/ Edward M. Sharpe
Edward M. Sharpe - Chairman

/s/ R. W. Copeland
R. W. Copeland - Employe Member

/s/ E. H. Hallmann
E. H. Hallmann - Carrier Member

Chicago, Illinois
June 17, 1958
(Date)