

ORG. FILE 8-50  
CARRIER FILE D-2424  
NRAB FILE CL-8830

AWARD NO. 25  
CASE NO. 25

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 and Texas Railway Company

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

(1) The Carrier violated the terms of the currently effective Agreement between the parties when it posted notice in the Freight House at Ft. Worth, Texas, that one employee would be on duty May 30, 1955, and the senior employee making request in writing would be assigned without regard to the work for which it was necessary to have an employee on duty and the Bill Clerk was assigned to work.

(2) Car Service and Switching Clerk C. D. Huyge now be allowed eight hours' pay at time and one-half for the holiday May 30, 1955.

FINDINGS: Special Board of Adjustment No. 194, 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.

This claim presents the question whether the Carrier violated Rule 48 in assigning work on a holiday to the "senior employee making request in writing." Rule 48, so far as pertinent reads:

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is primarily necessary shall be given preference."

By mutual interpretation of the parties this Rule covers holiday work (see SBA No. 194, Award 23).

The Carrier assigned a Bill Clerk who was the only employee making request in writing. Claimant was a Car Service-Switching Clerk; and the claim is that he, and not the Bill Clerk, was regularly assigned to the class of work for which the overtime on the holiday was primarily necessary.

First. The fact that Claimant failed to request the holiday work, and that the Bill Clerk was the only one who did so, is no defense against the Claim.

It is true that Claimant was entitled to no more than a "preference" under the Rule. It follows that, if the Carrier had offered the work to Claimant and Claimant had declined it, there would be no basis for claim. Instead of doing this, however, the Carrier posted a notice generally soliciting applications for the work, coupled with an indication that the assignment would be made on the basis of seniority instead of on the basis of the class of work for which the overtime was primarily necessary.

We are unable to conclude that Claimant waived his preferential right by failure to respond to such a notice. It is the Carrier's sole function under the Agreement to assign work; and this right carries with it the obligation to make a proper assignment.

Second. The general purpose, as distinguished from the primary necessity, for which the freight office was kept open on the holiday was to answer the telephone, handle inquiries and to render service to industrial customers who were not observing the holiday.

What class of service this might be could not, of course, have been definitely ascertained in advance; and the Carrier's action should be tested upon the basis of a fair judgment of what class of work might most likely be required rather than upon the basis of a hindsight tabulation of hours and minutes spent on particular classes of work.

The Bill Clerk's billing work bore no particular relation to the class of service which customers might require on the holiday, whereas the handling of car orders and switch orders was the particular class of service which customers would most likely be expected to require. Upon the record we find that the class of work to which Claimant was regularly assigned was the class of work for which this holiday overtime was "primarily necessary."

Third. Awards 8198 and 5912 are clearly distinguishable. In those cases the class of work for which the overtime was primarily necessary was regularly assigned to several employees; and those awards held that the Carrier properly assigned the overtime to the senior within the class.

Here on the other hand the Bill Clerk and the Claimant were regularly assigned to different classes of work; and although the Bill Clerk was the senior, the class of work to which he was regularly assigned was not the class of work for which the overtime was primarily necessary.

A W A R D

Claim sustained.

/s/ Hubert Wyckoff  
Chairman

/s/ T. P. Deaton  
Carrier Member

/s/ F. H. Wright  
Employee Member

Dated at St. Louis, Missouri August 6, 1958.