

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19802
Docket Number CL-19778

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7099)
that:

1. The Carrier violated the rules of the Agreement extant between the parties when it used a clerk junior to F. D. Hillyer to perform overtime work of instructing and/or supervising a newly hired clerk in the performance of work regularly performed by Mr. Hillyer during his regular work week.

2. F. D. Hillyer shall be allowed eight hours payment at the overtime rate for October 19, 1970.

OPINION OF BOARD: Carrier has sugar handling facilities at the boat dock at Oakland Mole, California. Among the facilities are two adjacent loading tracks in the Sugar Shed at the side of the dock. The clerical force at the Sugar Shed is responsible for the performance of: 1) the cumulative count of sugar packages Loaded in freight cars, and 2) janitor work in the Sugar Shed.

Claimant was regularly assigned to perform janitor work in the Sugar Shed under the title of Station Master, hours 7 am-1, pm, rest days, Sunday and Monday. On Monday, October 19, 1970, a rest day of claimant, extra janitor work was needed in connection with the cleaning of the Sugar Shed. As the incumbent of the janitor position the claimant would have been called on his **rest** day to perform the extra work, except that a furloughed employee was available and entitled to the extra work under Rule 20 (h). When the furloughed employee reported for duty, it developed that he needed instruction in order to **perform** the work. The instruction was provided by the Car and Train Desk Clerk who was held past his regular assignment on one hour of overtime for that purpose. The Car and Train Desk Clerk was regularly assigned to a class of work different from janitor work and also was junior in seniority to claimant.

Petitioner contends that the disputed instruction work belonged to claimant under Rule 20 (f) and (h) and that Carrier violated the Agreement by assigning the work **to** an employee who was not assigned to the janitorial class of work to be performed. Petitioner also argues in a general way that claimant was entitled to the work by virtue of seniority. Essentially Carrier's position is that the Agreement does not Limit its right to select an employee for the purpose of instructing **a** new employee and, hence, the manner in which it assigned the work was not violative of the Agreement.

We note here that, despite some assertions to the contrary by Petitioner, the record shows and we find **as** fact that the claimant did not perform instruction as part of his assigned duties during his work week. **We** also note that the Petitioner does not contend that the instruction work was in fact janitorial work performed under the label of instruction or that the instruction was a combination of both instruction and work.

The texts of paragraphs **(f)** and **(h)** of Rule 20 read as follows:

"**(f)** In working overtime before or after assigned hours, **employees** regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on holidays the same principle shall apply."

* * * * *

"**(h)** Work on Unassigned Days --

Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available furloughed **employee** who will otherwise not have 40 hours of work that week; in all other cases by the regular **employee.**"

The above language does not prescribe any express disposition of the one hour of instruction in dispute here. The texts of both **(f)** and **(h)** of Rule 20 deal with regularly assigned work which needs to be performed outside the assigned schedule of the regular employee; however, since the disputed instruction work had never been part of the regularly assigned work of the regular employee, claimant herein, these texts do not say anything at all about the regular employee having a preference to the work. The claimant could possibly have a right to the work by virtue of seniority; but, as previously indicated, the Petitioner has argued this issue only in a general way and has not cited a specific seniority provision under which claimant might prevail. Thus, the cited rules do not provide agreement support for claimant's right to the instruction work and we can infer none.

In its Rebuttal the Petitioner asserts that: 1) "It ... has been past practice that the regularly assigned employee on the position would be used to instruct **and** supervise inexperienced clerks."; and 2) Rule 20 **(e)** (Suspension of Work to Absorb Overtime) was violated by Carrier's direction that the Car and Train Desk Clerk perform the disputed instruction work during the hours of his regular **assignment**. These matters were not before the parties during handling on the property and, therefore, cannot properly be considered by the Board in the determination of this dispute.

In view of the foregoing we shall deny the **claim**.

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FINDINGS: The Third Division of the Adjustment Board, upon the whole record and **all** the evidence, finds and holds:

That the parties waived **oral** hearing;

That the Carrier and the Employee involved in this dispute we **respectively** Carrier and **Employees** within the **meaning** of the **Railway Labor Act**, as approved June 21, 1934;

That this Division of the **Adjustment** Board **has** jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.