

Award No. 2270
Docket No. CL-2292

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on September 30th, 1942, H. C. Landreth, General Clerk, rate \$5.59 per day, was required by the Agent to "bill" and "rate" six cars, i. e., three carloads of explosives and three cars of stone, at Carthage, Mo., which work of "billing" and "rating" is that which comprises the substance of the ordinary, normal and regular assigned duties of the position of "Bill Clerk" classified, listed and rated per the Clerks' wage agreement at a rate of \$6.19 per day and occupied by Clerk W. B. Adams, and failed and refused to compensate Clerk Landreth at the proper rate of the position and work which he performed, i. e., \$6.19 per day for the day involved.
2. That Clerk H. C. Landreth shall be compensated for the day of September 30th, 1942, at the rate of \$6.19 instead of \$5.59 which he was paid or a difference of sixty (60) cents account required to perform the higher rated work, i. e., duties consisting of "billing" and "rating" freight, which work at Carthage, Mo. requires a rate of \$6.19 per day pursuant to provisions of the Clerks' Agreement dated August 1, 1926 and the wage agreement dated Chicago, Ill. December 15th, 1941, effective December 1st, 1941.

EMPLOYEES' STATEMENT OF FACTS: The station force at Carthage, Mo. subject to the scope and operation of the Clerks' Agreement on September 30th, 1942, was as follows:

LOCAL FREIGHT OFFICE

Classification	Daily Rate	Name of Occupant	Hours of Assignment	Days Per Week
Chief Clerk				
Cashier	\$6.94	Harris, A. L.	8 to 12—1 to 5 PM	6
Bill Clerk	6.19	Adams, W. B.	7 AM to 11 AM—12 to 4 PM	7
General Clerk	5.59	Landreth, H. C.	2 PM to 7 PM—8 PM to 11 PM	6
" "	5.59	Erwin, C. M.	6 AM to 2 PM	6

WAREHOUSE

Warehouse				
Foreman	5.74	Smedley, A. W.	10:30 AM to 6:30 PM	6
Check Clerk	5.59	Clevenger, Y. L.	3:30 AM to 11:30 AM	6

"Employees temporarily or permanently assigned to higher rate positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee, due to a temporary increase in the volume of work, does not constitute a temporary assignment."

As stated in the Carrier's Statement of Facts, Mr. Landreth, a General Clerk at the Carthage station, who is employed to do clerical work of a general nature, which is implied by his payroll classification and rate of pay, performed the clerical work incidental to the billing of these six cars of freight. While there is no record of the actual time Mr. Landreth was engaged in the billing of these six cars, it would ordinarily require a clerk of Mr. Landreth's capabilities approximately 1 hour and 10 minutes to do what was done by him in this instance.

Rule 66, cited by the employees to sustain their position that Mr. Landreth should be compensated at the Bill Clerk's rate of \$6.19 per day for 8 hours, instead of \$5.59 per day for 8 hours, September 30, 1942 (actual time spent in billing cars approximately 1 hour and 10 minutes) has, so the Carrier contends, no application whatever to this dispute. Mr. Landreth was neither temporarily nor permanently assigned to the Bill Clerk's job. By no stretch of the application of this rule or, for that matter, any other rule of the Agreement dated August 1, 1926, could the facts in the case justify paying Mr. Landreth 8 hours pay at \$6.19 per day for the clerical work not to exceed 1 hour and 10 minutes of the 8-hour day on September 30, 1942 that he was engaged to handle the billing incidental to the movement of these six cars of freight.

In connection with this case, attention is respectfully called to another submission by the Clerks' Organization to the National Railroad Adjustment Board involving a time claim of W. B. Adams, the Bill Clerk for whom the employees are contending a monetary consideration of a sum of \$2.32, account he not having been called to perform the work that was performed by Mr. Landreth.

What is said in this case, the Carrier respectfully requests be considered by the Board in the handling of the Landreth case, and conversely, what is said in the Landreth case the Carrier requests the Board to give consideration therein in handling of the Adams case.

OPINION OF BOARD: The sole question presented by this docket is whether the claimant, Landreth, was "temporarily * * * assigned to a higher rated position, within the meaning of Rule 66 of the current agreement.

Landreth was qualified to do the work of a "Bill Clerk." He was regularly assigned as a "General Clerk." During his assigned hours there was no bill clerk on duty. On September 30, 1942, Landreth was required to "bill" and "rate" six cars of outgoing freight. This is recognized as bill clerk work, work which most general clerks would not be qualified to do. The trainmaster had instructed the agent to have Landreth "do any billing and rate work that was received to be performed after the bill clerk had gone off duty." This claim covers one instance in which this was done.

The parties by negotiation have agreed on certain rates of pay for certain positions. The work attaching to such positions was the chief factor involved in determining the proper rate of pay.

To preserve these rates against possible encroachment, Rule 66 was framed and made a part of the Agreement. It provided that:

“Rule 66—Preservation of Rates

Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

A ‘temporary assignment’ contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee, due to a temporary increase in the volume of work, does not constitute a temporary assignment.”

The Carrier insists that this claim does not present a case of a temporary assignment to a higher rated position within the meaning of the rule; that a general clerk may be required to do all types of work. The particular work here involved was the type of work on which the bill clerk’s rate was principally based, a type of work which required more training than the ordinary general clerk had had. If the Carrier were permitted to carry its contention to the extreme, it could dispense with all bill clerks, have their work done by general clerks and thus nullify Rule 66. On the other hand, if the Carrier could never require a general clerk to perform any incidental task ordinarily performed by a higher rated clerk, it would present a situation so impracticable that we could not say it was intended by the parties.

It would seem that we must decide each case on the facts presented. In the instant case the employees state in their original submission that the trainmaster, on being advised by the agent that Landreth was a competent rate and bill clerk, instructed the agent, “to let the general clerk do any billing and rate work that was received to be performed after the bill clerk had gone off duty;” and that this “has been done.” This statement of fact was not challenged by the Carrier.

While we do not know just how much of this work was actually done by the general clerk, the instructions of the trainmaster were sufficient to authorize a general practice of the general clerk doing this type of work after the bill clerk had gone off duty. The particular work here in question was done under these general instructions.

We are of the opinion that under the facts of this case the claimant could be said to have been temporarily assigned to a higher rated position and should have received the higher rate. While doing this work, he was fulfilling “the duties and responsibilities of the position” of bill clerk. He was not “assisting the higher rated employee due to a temporary increase in the volume of work.” This was work which came in after the bill clerk had gone off duty.

The classification cases cited by the Carrier are not particularly helpful. They involve the question of whether a given position involves enough work of a higher rated classification that the position should be reclassified, while our case involves the question of how much of the work of a higher rated position must an employee of a lower rated position do, and under which circumstances, before he can be said to have been temporarily assigned to the higher rated position. An employee might well be considered as being temporarily assigned to a higher rated position and still not make a sufficient showing to warrant a reclassification of his regular position.

FINDINGS: The Third Division of the Adjustment Board, after giving 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 the employe involved in this dispute are respectively carrier and employe 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 carrier violated the Agreement as alleged in the claim.

AWARD

The claim (1 and 2) is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.

DISSENT TO AWARD NO. 2270, DOCKET CL-2292

The grievance in respect to the circumstances of this case was settled by the immediately preceding Award No. 2269, which dealt with the identical circumstance and denied to other than the claimant in the instant case who performed the work the claimed exclusive right to that work. Award No. 2269 disposed correctly and definitely of the actual grievance.

The present Award assumes an extreme that could not practicably be effected under the operation of the Agreement and also ascribes to the Trainmaster's instructions not a deliberate intent but the result of effecting a general practice evasive of the purposes of the Agreement.

In the knowledge of the practical operations of a freight station with regular hours fixed to enable its forces to handle all but the occasional shipments of its patrons with but an exceptional practical necessity to use immediately available and contractually competent force as in this instance, the decision to allow a punitive rate to such employe represents only misapprehension of the practical situation.

(s) C. C. Cook
(s) C. P. Dugan
(s) R. F. Ray
(s) A. H. Jones
(s) R. H. Allison