

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the New York, New Haven and Hartford Railroad Company, that

(1) Mr. R. J. Sheehan, Clerk employed in the U. S. Mail Accounts Section, a subdivision of the Foreign Interline Bureau of the Auditor of Passenger Receipts Office, New Haven, Conn., be paid at the rate of \$48.25 per week for the period June 15th to 30th, inclusive, 1943, or fourteen days, and

(2) Mrs. A. D. Durkin, Clerk employed in the Passenger Ticket Section of the Foreign Interline Bureau of the Auditor of Passenger Receipts Office, be paid at the rate of \$44.99 per week for the period June 15th to 24th, inclusive, 1943, or nine days.

EMPLOYES' STATEMENT OF FACTS: The Foreign Interline Bureau is one of several Bureaus under the supervision of the Auditor of Passenger Receipts at New Haven, Conn., all of which are engaged in the counting of passenger receipts. Each Bureau is supervised by a Bureau head who reports directly to the Auditor of Passenger Receipts and the Bureaus are subdivided into various sections with a lead clerk in each subdivision identified as an Assistant Bureau head who reports to the Bureau head.

Prior to June 15, 1943 the U. S. Mail Accounts Section of the Foreign Interline Bureau was composed of four positions, the position numbers and incumbents, titles, rates of pay and monthly duties being as follows:

Position No. 926—Assistant Bureau Head-Clerk	Days per month
Mr. George Breuler, Rate \$48.85 per week	
Verifying and putting in order 5365 and 5369 slips	1
Billing emergency slips on affidavits	10
Checking at New Haven P. O. District No. 5	2
Checking at Superintendent's Office Boston P. O.	2
Checking through cars from Stationmaster's reports and card manifests	2
Checking storage car numbers for duplication	1

indicated is evidenced by the presentation of this claim in the letter of appeal of the General Chairman dated March 16, 1944, reading:

"Mr. E. B. Perry, Manager-Personnel
N.Y.N.H. & H. R.R. Co.
New Haven, Conn.

Dear Sir:

Appeal is taken from decision of Mr. G. T. Carmichael, Vice President and Comptroller, his letter of January 8 concerning claims of R. J. Sheehan and Mrs. Anna D. Durkin employed in the Auditor of Passenger Receipts Office.

For the period of June 15 to 30, 1943, a total of 14 days, R. J. Sheehan was assigned to assist Mr. Breuler on the U. S. Mail Accounts performing the same responsibilities and duties as Mr. Breuler, during that time and Mrs. Anna Durkin was assigned to cover Mr. Sheehan's position for the period of June 15 to 24, a total of nine days. Mr. Breuler's position carries a rate of \$48.85 per week, Mr. Sheehan's \$44.99 and Mrs. Durkin's \$31.20 (all old rates).

Claim is made that Mr. Sheehan be paid the difference between \$48.85 and \$44.99 per week for the fourteen days he was assigned to assume the duties and responsibilities of Mr. Breuler's position and that Mrs. Durkin be paid the difference between \$44.99 and \$31.20 for the nine days she was assigned to cover Mr. Sheehan's position. The basis for our contention is Rule 62 of our agreement and that both Mr. Sheehan and Mrs. Durkin covered the full assignments of the higher rated position on the specified dates.

Will you please set time and date when we may discuss these claims.

Sincerely yours,

(Signed) John J. O'Connell
General Chairman."

OPINION OF BOARD: The question presented by this record is whether the two employes involved in the instant claim were assigned to higher rated positions for the periods specified. Rule 62 is involved which reads:

"Employes assigned to higher rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced.

"An '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 assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute an assignment. It shall not be the practice to regard a lower rated employe as 'assisting' a higher rated employe when the volume of work has increased to the extent of justifying the establishment of an additional higher rated position."

Organization contends (1) that from June 15 until June 30, 1943, Sheehan suspended work on his regular position, No. 839, and was assigned to the work performed by Breuler who was the Assistant Head Clerk occupying position No. 926; (2) that from June 15 to 24, 1943, Mrs. Durkin, regular occupant of position No. 879 in Passenger Ticket Section of the Bureau suspended work on her position and took over Sheehan's position. Carrier concedes that a limited amount of work was done by these employes in the higher rated positions but urges that it was assistance due to temporary increase in the volume of "emergency mail" service and comes within the exception in the rule which provides:

"Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute an assignment."

The first question that must be answered is: Did employees Sheehan and Durkin fulfill the duties and responsibilities of the higher rated positions in question? It will be observed that the rule does not provide that an assignment contemplates the fulfillment of all the duties and responsibilities of the position. It is significant too that under the rule there may be an assignment irrespective of the presence of the regular employee. It would seem therefore that it is for the Board to determine upon the facts in each case whether there has been in fact an assignment. See Award 2270. It appears that while Sheehan was performing some of the work in the higher rated position, other work of identical character was at the same time being performed by Head Clerk Breuler. The record seems to sustain the contention of Organization that Claimants were performing the duties and responsibilities of the higher rated positions within the meaning of the rule.

We come then to the second and remaining question: Were the employees assisting a higher rated employee due to a temporary increase in the volume of work? In connection with this issue, it is Carrier's contention that the work was due to temporary increase in volume of emergency mail service over the Christmas holidays. However, the record seems to support Organization's position that there had been a regular seasonal increase of business which resulted in an accumulation of work, necessitating more help. This is borne out by the fact that an additional employee was added to the U. S. Mail Section force effective July 10, 1943. (See Docket CL-2978.) If there was a steady and consistent increase in the volume of the work, even though seasonal, as there appears to have been here, then it seems to the Board that such an increase does not come within the contemplation of the exception in the rule as to "temporary increase." Compare Award 2262.

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 employees involved in this dispute are 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 Carrier violated the Agreement.

AWARD

Claim (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 14th day of December, 1945.