

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that J. W. Peters, Train Desk Clerk, Stockton, California, be paid at one and one-half times his own rate of \$7.42 per day while assigned to position of Interchange Clerk, 4:00 P. M. to Midnight, September 4, 5, 6, 7, 11, 12, 13, 17, and 18, 1944.

Claim of the System Committee of the Brotherhood of Railway Clerks that E. S. Moyes, Train Desk Clerk, Stockton, California, be paid at one and one-half times his own rate of \$7.42 per day while assigned to position of Interchange Clerk, 4:00 P. M. to Midnight, September 9th and 11th, 1944.

POSITION OF EMPLOYES: During the month of September 1944, J. W. Peters and E. S. Moyes were assigned to positions of Train Desk Clerk, rate \$7.42 per day at Stockton, California, with hours 8:00 A. M. to 4:00 P. M. On the dates specified above, each was required, in addition to his regular tour of duty, to work an additional eight hours on position of Interchange Clerk rated at \$6.92 per day. For this second tour of duty each was paid at one and one-half times the interchange rate of \$6.92 per day. Thus each was required, on the days involved, to perform the duties and responsibilities of a lower rated position.

Rule 11 provides that employees assigned temporarily to lower rated positions shall not have their rates reduced. No wording appears which would have the effect of modifying the provision as it affects the situation here involved. It is the position of the employees, therefore that for the performance of work on position of Interchange Clerk the employees here involved were entitled to be compensated on the basis of their own rate of \$7.42 per day.

Rule 64 shows that the current agreement became effective December 16, 1943. At that time it was the accepted practice to compensate employees as herein claimed.

Rule 62 provides that the General Chairman shall be furnished with copy of rulings by officers of the Railroad affecting the interpretation or application of any rule in the current agreement. This Brotherhood has not received copy of any ruling which changed the long standing interpretation of Rule 11 as applied to circumstances such as are here involved.

Subsequent to the dates involved in this claim, employees at Stockton, California have been required to perform a second tour of duty on positions

Rule 8 specifically provides that positions and not employees shall be rated. The positions of Train Desk Clerk and Interchange Clerk were rated. To grant the demand of the employees in this instance would be the equivalent of rating employees instead of positions.

Peters and Moyes were not assigned temporarily to lower rated positions within the meaning of Rule 11. Each of these men was assigned to position of Train Desk Clerk at \$7.42 per day, and on each day, they were paid at their regular rate for their regular assignment. The service here involved was extra work which was performed in addition to their regular shift in accordance with their seniority desires.

Rule 27 clearly contemplates that Carrier shall not be penalized because of seniority. The employees have persistently contended that when extra work is performed by regular employees, such regular employees desiring the work must be used in accordance with their seniority. Peters and Moyes were so used.

Rule 40 specifically provides that extra work shall be done by furloughed employees and makes no provision for the formula to be followed in taking care of the extra work when furloughed employees or prospective employees are not available. The only alternative, of course, is to ask other regular employees to double, which was done in this instance.

OPINION OF BOARD: Claimants, who were regularly assigned to positions of Train Desk Clerk with rate of pay \$7.42 per day were, on the days specified in the claim, called upon to work additional assignments of eight hours as Interchange Clerks. The rate of pay of the latter position was \$6.92 per day. Claimants were paid at the overtime rate on that basis. They assert that they should have been paid at the overtime rate on the basis of the higher rate of their regular positions.

In support of their contention they invoke Rule No. 11 of the controlling Agreement, which provides:

"Employees assigned temporarily to higher rated positions shall receive the higher rate. Employees assigned temporarily to lower rated positions shall not have their rates reduced * * *"

This Board has consistently applied this rule to disputes falling under the first sentence of it. The few Awards dealing with the second sentence seem to be somewhat in conflict. Faced with facts involving extraordinary and emergent situations under which the employees **volunteered** to take on the assignments to lower rated positions, the Board, in Awards Nos. 2670, 2671, 2672, 2679 and 2680 declined to apply the second sentence of the rule. In Award No. 3256, the Board said:

"In Award No. 2672 the employees were compensated at the overtime rate of the position worked. **It is clearly the correct application of the rule.**" (Emphasis supplied.)

That statement, however, has no authoritative value in construction of the rule. For, in that case the claim was for the overtime rate of the position worked; and the claim was sustained. In other words the question presented here was not in issue in that dispute.

In Award No. 2687 the Claimant whose rest day was Sunday was assigned to work a lower rated position on two successive Sundays. He was paid straight time. His claim was for time and a half at the rate of his own position. Rejecting the contention of the carrier that a rule identical to Rule 11 was inapplicable, the Board said:

"The Carrier urges, however, that Rule 50 was intended to apply only to the temporary filling of vacancies or where employees in conjunction with their regular work are temporarily assigned to assist in keeping up the work of another assignment due to the temporary absence of the regular incumbent. This Board has con-

sistently applied the rule where the employe performed the duties of a higher rated position even for one day only. The interpretation advanced by the Carrier finds no support in the past awards of this Board. Certainly Rule 50 contains no specific limitation of that nature nor can such an interpretation logically be read into it."

We think Award 2687 is a sound and fair construction of the rule and a correct application of its terms.

The second sentence of the rule merely accords a right which is the counterpart of the right accorded by the first sentence; and it should be given the same force and effect.

We do not think that Rules 27 and 40, cited by the Carrier, impinge in any degree upon the rights conferred by Rule 11.

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 Employes involved in this dispute are respectively carrier and employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1947.