

Award No. 4672
Docket No. CL-4700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTH-
WESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.;
SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS,
TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR.
CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS
VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.;
ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.;
ASPHALT BELT RY. CO.; SUGARLAND RY. CO.**

(Guy A. Thompson, Trustee)

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

A. The Carrier violated the Clerks' Agreement in the Auditor's office at Kingsville, Texas in January and February 1948 when it withheld R. W. Wright from his assigned position and work and required him to work another position, perform an entirely different type of work, during the period January 12 through February 6, 1948. Also

B. Claim that Mr. Wright be paid an additional day's pay at the rate of his regularly assigned position, which he was not permitted to work, for each day he was withheld therefrom.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. W. Wright entered service of the Carrier on October 1, 1926 and his name appears on the seniority roster with that date. Mr. Wright has been in service nearly 23 years.

On May 15, 1946 the Carrier issued Bulletin No. 57 advertising position of Rate Clerk. The duties assigned, and to be performed by the occupant of the position, are outlined on the bulletin.

tion of land grant and non-land grant rates which computations had originally been made by claimant in the performance of his regular routine work as rate clerk, and accordingly was of necessity taken from those records. Under these circumstances it is difficult to understand the basis for Employees' contention that claimant was improperly used.

There was no other position established, as implied in paragraph (a) of Statement of Claim, for the purpose of compiling the information necessary and requested by the attorneys in connection with Civil Action Case No. 4999, all such data was prepared by employees whose regularly assigned duties were related to and connected with the subject matter involved. We believe the Carrier has conclusively shown that claimant's regularly assigned duties included the handling of land grant and non-land grant rates, the computation of which and division of transportation charges based thereon was the very matter involved in Case No. 4999.

In the handling of this dispute on the property the Employees cited no rule in the Clerks' Agreement to support the claim set forth in paragraph (b) of their Statement of Claim, that claimant is entitled to an additional day's pay at the rate of his regularly assigned position. The Carrier knows of no rule in the agreement that would support such a claim. During the period in question claimant continued to hold his regular position and he was compensated at the rate of his regular position each day. His regular position was not taken over by any other employee. Under these circumstances the Carrier fails to see any basis whatever for the Employees' contention that he should be paid an additional day's pay at the rate of his regularly assigned position, or a total of \$23.18 per day for each day he was used in the preparation of data requested in connection with Civil Action Case No. 4999.

In view of the circumstances related above and in the absence of any rule in the agreement cited by the Employees to the Carrier in support of their contention and claim for two days pay for each day worked, together with the absence of any rule in the agreement that would even remotely tend to support such a claim, the Carrier frankly admits its inability to find any basis for the Employees' contention and claim. Under these circumstances the Carrier, in replying to Employees' contention and claim as here submitted to your Board without having seen the Employees' submission, reserves the right after having an opportunity to examine Employees' statements of fact, position and argument, to present such additional factual evidence and argument which in its opinion is appropriate and necessary to complete its presentation of the case.

For reasons previously stated it is the position of the Carrier that there is no basis in fact for the contention of the Employees as set forth in paragraph (a) of their Statement of Claim, and accordingly no merit and no basis under the governing agreement for the claim set forth in paragraph (b) thereof. Therefore, the Employees' contention should be dismissed and the accompanying claim accordingly denied.

(Exhibits not reproduced).

OPINION OF BOARD: R. W. Wright held the position of rate clerk in the office of auditor of freight and passenger accounts at Kingsville, Texas. The duties bulletined to this position were: "Rating Govt. bills lading; land grant and non-land grant, and handling correspondence in connection therewith; revising waybills; miscellaneous rate work including correspondence, statements, waybill corrections and claims," but practically all of Wright's regular work consisted of the revision of waybills.

Government shipments over land grant railroads enjoyed reduced freight rates, but division of revenue had been made among the carriers participating on the same basis as in the case of non-government shipments, even though they moved over one or more non-land grant railroads en route. Early in 1947 certain eastern carriers filed suit claiming that such method of division was erroneous as to non-land grant railroads and the Carrier here involved was a

party to that suit. In connection therewith, the Carrier's attorneys requested that it prepare certain exhibits including a showing of such land grant shipments from their records; the net rate applied; and proportions of the gross and net charges both as actually paid the several carriers, and as would have accrued to them under the basis contended for by the eastern carriers in the pending suit.

Several employees, including Mr. Wright, assisted in the preparation of this data over a period of three months, on overtime, and from January 12, 1948 to February 6, 1948, Mr. Wright was required to devote his entire time to the preparation of these exhibits. In the words of the Carrier's statement of facts: "That part of claimant's regular work which did not receive his attention during the period in question, practically all of which involved revision of waybills, was not permitted to accumulate, such waybills during this period were passed without revision."

Claimant contends that the preparation of the exhibit was not a duty connected with the position which Mr. Wright held under seniority right; that by assignment thereto to the exclusion of the assigned duties of his position he was arbitrarily withheld therefrom, and that this was violative further of Rule 44: "Employees will not be required or permitted to suspend work during regular hours to absorb overtime."

Carrier asserts that the preparation of the exhibit was directly related to claimant's regularly assigned work, and that it is a managerial prerogative to direct the preparation of such special data to the exclusion of regular routine work.

Although the routine work performed might assist in getting at the intended meaning of the bulletined description, the duties of claimant's position were not limited to his routine work alone. They were as broad as the bulletined description of duties, and the Carrier could rightfully direct the order of performance of such duties and the omission of any of them not deemed essential, but, under Rule 44, the Carrier could not rightfully direct an employee, during his regular hours of work, to suspend the assigned duties of his position, and perform work outside such duties for the purpose of preventing or limiting overtime.

The task of preparing exhibits was not one of "rating Govt. bills of lading" or of "correspondence in connection therewith," or of "revising waybills." It was not "miscellaneous rate work" of the sort included in the bulletined description, to-wit: "correspondence, statements, waybill corrections and claims." The duties bulletined to the position all concerned rates. The matter involved in the litigation and sought to be shown by the exhibits was not, primarily, concerned with rates, either as to the amount of the rates, or the correction or revision of the rates, but rather, it was concerned with the proper method of division of the revenue between the connecting carriers. And the division of revenue was handled neither by Mr. Wright nor by the rate department. It was assigned to a separate department—the interline department. Computing amounts and proportions of division of revenue was work of the interline department and any exhibit showing such division would of necessity be taken primarily from the records of the interline department. We conclude that the making of the exhibits was not part of the regular assigned duties of Mr. Wright's position.

Such being our conclusion we find it impossible to distinguish this claim in principle from that determined by Award No. 4641 and its reasoning and ruling, supported by the many awards in harmony therewith, must control us here.

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

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1949.