

Award No. 5578

Docket No. CL-5506

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

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

- (1) The Carrier violated the Clerks' Agreement in the General Auditor's office at Erwin, Tennessee in June and July 1950 when it withheld C. F. Hyder from his assigned position and required him to work another position.
- (2) Mr. C. F. Hyder be compensated for 8 hours each day worked June 26, 1950 to July 7, 1950, both inclusive, at the rate of his regular assignment as Freight Clerk, in addition to the compensation allowed for the service performed as Head Tabulating Clerk.

EMPLOYEES' STATEMENT OF FACTS: Mr. D. C. Brown regularly assigned to the position of Head Tabulating Clerk in the Accounting Department was granted a short leave of absence to attend a Scout meeting. During his absence Mr. C. F. Hyder regularly assigned to the position of Freight Clerk was required to suspend work on his assigned position as Freight Clerk and work the position of Head Tabulating Clerk. Mr. Brown received no compensation for the days absent. The position of Freight Clerk assigned to Mr. Hyder was blanked on June 26, 27, 28, 29, 30, July 3, 5, 6 and 7, during which time he performed the duties of the Head Tabulating Clerk.

Claim was filed by Mr. Hyder in letter to Mr. Charles Hewett, General Auditor, dated July 10, 1950, reading as follows:

July 10, 1950

Mr. Charles Hewett, General Auditor
Clinchfield Railroad Company,
Erwin, Tennessee

Dear Sir:

I was informed by Mr. Taylor that you had instructed that I report to the Tabulating Machine room June 26, 1950 and perform the duties of Head Tabulating Clerk, account of the absence of Mr. Brown the assigned Head Tabulating Clerk.

Rule 17:

"(a) When the requirements of service will permit, employees on request will be granted leave of absence not to exceed thirty (30) days, with the privilege of renewal . . .

(d) The arbitrary refusal of a reasonable amount of leave of absence to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employees, is an improper practice and may be handled as unjust treatment under this agreement."

The work on the position of head tabulating clerk is just as important one day as another and there was no particular circumstance at the time Mr. D. C. Brown requested a leave of absence to justify denying it without running afoul of the "unjust treatment" rule. Therefore, carrier had no choice but to grant the request.

As pointed out above, the absence was to be such short duration that it would not have been feasible to scramble the entire office in order to fill both positions. Mr. Hyder was asked to report to the tabulating room, this situation is adequately covered by Rule 37(a), as follows:

"(a) 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."

The rule just quoted indicates that, under some conditions and under certain circumstances, such as we have here, employees must be temporarily shifted from one position to another in order for carrier's work to proceed efficiently. Were this not true there would be no necessity for the rule which protects the employees' rates of pay under those circumstances.

The work of both positions involved herein are regular positions and form a part of the daily routine of carrier's operations. There is no extra or special work involved. The work in the tabulating room must be kept current and it is for that reason the position was filled during the absence of Mr. Brown. An emergency situation was created by this absence, at employees' request, and it was necessary for the management to relieve the situation using its best judgment.

As stated above, the work on Mr. Hyder's position was in arrears when he was assigned to it, is still in arrears, and likely will be for some time to come. Mr. Hyder's work is the same regardless of this fact and he was not required to work any harder and no additional burden was put on him as a result of being temporarily assigned to another position.

Carrier can see no justification for paying double pay, overtime or any additional pay for a situation created for the accommodation of employees and at the request, a request which carrier cannot deny under ordinary circumstances without violating Rule 17, quoted above.

Therefore, carrier insists that there has been no violation of the agreement and respectfully requests your Honorable Board to deny the claim.

OPINION OF BOARD: Starting with our Award No. 2346 and continuing to the present time, we have uniformly held that to require an employee to suspend work on his regularly assigned position in order to work on another position, except in emergencies, is considered to be a suspension of work to absorb overtime in violation of the rule prohibiting such action. In some of those Awards there were differences in factual situations but the factual situation involved in Award No. 4499 is in all material respects identical to the situation involved here.

Thus in effect the Carrier here is asking us to overrule that consistent line of decisions. Certainly among the fundamental purposes sought to be achieved by the establishment of this Board were (1) uniformity of interpretation of the rules, (2) stabilization of relationships between the Carriers and the Employee Organizations, and (3) the diminishment of causes for disputes between them. To overrule our prior decisions, which uniformly interpreted the no suspension of work to absorb overtime rule, would be subversive of those fundamental purposes. Under such circumstances, if a change is proper and desirable we think it should be obtained through the amendment of the rules by the parties rather than by overturning our prior Awards.

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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of December, 1951.