

Award No. 6153
Docket No. CL-6194

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated rules of the currently effective agreement dated September 1, 1949, when it required the following regularly assigned employees to suspend work normally attached to their regular assignments to perform work of preparing loss and damage reports form CS-35 which work is normally and traditionally attached to position of Inspector, job 132, at the Great Atlantic and Pacific Tea Company, 445 West Pershing Road, Chicago, Illinois:

Name of Employee	Regularly Assigned Position	Location	Rate of Pay	Date Susp. From Reg. Assn. To Work Job 132
Thomas E. Carroll	Inspector Job 113	Chicago Agency Ofs.	\$15.33	Jan 4-16, 1950 (9 days)
Frank F. Hoffmann	Live Stock Agent Job 161	Chicago Union Stock Yards	\$16.40	Jan 3, 1950 (1 day)
John Mergenthaler	Chief Inspector Job 112	Chicago Agency Ofs.	\$16.40	Jan 4-12, 1950 (6 days)

(b) Claimants be additionally paid at their regular rates of pay for each day listed in Section (a) hereof.

EMPLOYEES' STATEMENT OF FACTS: Involved in this dispute are four positions, all located in the Chicago territory of the Milwaukee Seniority District to-wit:

1. Inspector Job 113 assigned to Thomas E. Carroll working out of the Chicago Agency Office, Room 380, Union Station, Chicago, Illinois. It is ordinarily referred to as a "street man" job, the work consisting of making special investigations including investigations covering claims that are received from the Carriers as to weights and classifications description.

there is no necessity for us elaborating on his comments. They speak for themselves.

We reiterate in closing this submission that the Employees' claim has no merit, and we respectfully request that after you have reviewed the facts contained herein you will find that there has been no violation of any of the rules in our Agreement.

All information contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: These are claims for additional payment in behalf of Thomas E. Carroll holding Inspector Job 113, Chicago Agency Office, Frank F. Hoffmann, holding Live Stock Agent Job 161, Chicago Union Stockyards, and John Mergenthaler, holding Chief Inspector Job 112, Chicago Agency Office, on the ground that each was required to suspend the work of his assignment to perform work of preparing profit and damage reports, form CS-35, which work is said to be normally and traditionally attached to position of Inspector Job 132, at the Great Atlantic and Pacific Tea Company, 445 West Pershing Road, Chicago.

The duties of Inspectors Job 132 at Great Atlantic and Pacific Tea Company covered inspection of carload shipments of freight, determining cause of damage and preparing Form CS-35 reports in connection therewith showing the method of loading, the damage and the disposition of the shipment. That inspector was known as the Loss and Damage Inspector at the warehouse of the Tea Company, and there is no suggestion that his duties extended beyond the shipments at that warehouse.

Carroll's Inspection Job 113 was known as Inspector-at-Large or Street Man. Its duties as bulletined included inspecting inbound carload shipments of eggs, preparing CS-38 reports, checking certain shippers agreements and Loss and Damage Inspections. In the absence of showing to the contrary we think the presumption is that the assignment of certain work in a specific area to one job was intended to exclude that area from the field of a job assigned at large. Otherwise there are conflicting claims to the work and conflicting authority and responsibility.

Accordingly we think Carroll could not properly be assigned to perform the work at the Tea Company warehouse. Before the Board the Bureau no longer relies on Rule 43, the Preservation of Rate rule, but insists that Carroll's assistance at the Tea Company warehouse was not for the purpose of avoiding overtime. It is admitted that the work had fallen behind and that the help was given so that it could be brought up to date. We can only say, as this Board has repeatedly said before, that we must ascribe to parties the intent to do that which normally and logically results from their acts.

Challenge is made for the first time before the Board to Carroll's assistance on Job 132 on certain dates included in the claim. We must accept the dates unchallenged on the property in the absence of admission here. Therefore we think claim in behalf of Carroll is valid.

As to claim in behalf of Hoffmann, there was no denial on the property of his assisting at Job 132 at the Tea Company warehouse as claimed. His job as Live Stock Agent has no apparent nor shown connection with Job 132 and his consent was not necessary for filing claim in his behalf.

As to the claim in behalf of Mergenthaler, the Chief Inspector, one of the assigned duties of his job is to "train and collaborate with the freight inspectors in the Chicago Terminal" such as appears was his work here complained of.

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 Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim in behalf of Carroll sustained.

Claim in behalf of Hoffmann sustained.

Claim in behalf of Mergenthaler denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1953.

DISSENT TO AWARD NO. 6153, DOCKET CL-6194

The Award herein is in error in sustaining claims of Carroll and Hoffmann, and is entirely devoid of any precedent value on any point raised therein in respect of those claims, for the following reasons:

1. It is not based upon work having been suspended to absorb overtime on Position No. 132 at the Great Atlantic and Pacific Tea Company.

The Carrier irrefragably showed that no overtime ever had been worked on that position; that it was impossible to work overtime thereon even if it had been necessary to do so inasmuch as the office is locked up and the A&P Company would not allow any of the Carrier's representatives to work therein after closing time, and that it was not necessary to work overtime on Position No. 132 in January 1950 in any event inasmuch as the number of Forms CS-35 issued that month at the A&P Company was normal and was less or did not exceed the number issued in certain other months when no overtime was worked thereon. For these reasons alone the claims of Carroll and Hoffmann should have been denied based upon the majority's holding herein "that we must ascribe to parties the intent to do that which normally and logically results from their acts." No overtime could normally, logically or otherwise have resulted from Carrier's action herein, and none was necessary.

2. The Award herein also is in error in sustaining the claim in behalf of Carroll, the Inspector-at-Large, because it is based solely upon the erroneous presumption that "in the absence of showing to the contrary we think the presumption is that the assignment of certain work in a specific area to one job was intended to exclude that area from the field of a job assigned at large."

The Opinion herein itself bespeaks of falsity of the presumption, *supra*, in denying the claim in behalf of Mergenthaler, who holds the position of Chief Inspector, inasmuch as that is another "job assigned at large." Furthermore, there was ample showing to the contrary of that presumption in a statement from Carroll himself testifying that the work herein is a regular part of his duties and that he and his predecessor Inspectors-at-Large always have performed such work in the past. In addition, the Organization admitted the propriety of Carroll's issuing Form CS-35 reports for concerns other than the A&P Company and there was no showing that anything in the rules precluded his performing such service for the latter Company.

3. The Award herein also is in error in sustaining the claim in behalf of Hoffmann solely because "there was no denial on the property of his assisting at Job No. 132 at the Tea Company Warehouse as claimed". Hoffmann had no knowledge of the claim filed in his behalf until receiving from the Organization copy of its notice to the Carrier dated April 30, 1952 of its intention to submit the case to this Board. Under date of May 12, 1952, he wrote the Organization, with copy to the Carrier, stating "I did not perform any work in connection with Job No. 132 at the Great A&P Tea Company." That statement was made prior to the Organization's *ex parte* submission having been filed with this Division on June 9, 1952.

Hoffmann's statement, *supra*, is a material statement of fact which the Petitioner was under legal obligation to place before this Board in accordance with Sec. 3, First (i) of the Railway Labor Act, as amended, which requires the parties to furnish "a full statement of the facts and all supporting data" bearing upon disputes submitted to this Board. When Petitioner failed to comply with the Act in this respect, the statement was properly pleaded by Respondent and should have been considered by the majority herein as eliminating any validity from the claim filed in his behalf by the Petitioner.

For the foregoing reasons we dissent.

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ J. E. Kemp

/s/ C. P. Dugan

/s/ R. M. Butler