

Award No. 6661
Docket No. CL-6587

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, 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 &
NORTHWESTERN 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 at Palestine, Texas, in January, February and March 1952, when it required or permitted Mr. W. T. Sims to suspend his regularly assigned work on Overcharge Claim Investigator position No. 2238, and required or permitted him to perform work that is specifically assigned to the Rate Bureau under agreement of September 18, 1951. Also

(b) Claim that Mr. Sims be paid additionally at the straight time rate for all time he was withheld from his own position and work. Also

(c) Claim that employes properly and regularly assigned in the Rate Bureau be compensated for all losses sustained because of having been denied the right to perform and be paid for the work that was performed by Mr. Sims.

Just why it is felt that claimant is entitled to an additional payment as set up in paragraph (b) of the Statement of Claim is not understood, and particularly so since, as evidenced by Carrier's Exhibit "A," his regular assigned duties included "checking rates" and which duties were assigned to him both prior and subsequent to September 18, 1951, the date the Rate Bureau, with four rate clerks, was established in the office of Auditor Freight & Passenger Receipts, the same office in which claimant was employed.

Neither can we see any basis or justification, in the light of the foregoing, for the claim set up in paragraph (c) of the Statement of Claim. The evidence certainly does not support any contention that employees in the Rate Bureau sustained any losses.

It appears to be the position of the Employees, according to paragraph (a) of the Statement of Claim, that all rate work must be performed exclusively by the employees "specifically assigned to the Rate Bureau under agreement of September 18, 1951." (Carrier's Exhibit "B"). Positions 496, 444, 497, 445, are the four positions specifically set up in that agreement. The foregoing record of overtime worked in the Rate Bureau does not so indicate. The record shows a total of eight positions working overtime in that department or bureau during the three-months period here involved.

As evidenced by the last two paragraphs of Memorandum covering the conference of November 25, 1952 (see paragraph 14 of Carrier's Statement of Facts, supra) it was agreed in order to dispose of this case, to discontinue the position of Investigator, No. 2238, then occupied by claimant, and in lieu thereof establish an additional position at the rate in the Rate Bureau with the other four positions set up therein by the September 18, 1952 agreement, at least until such time as the cotton claim work again reached the point to justify re-establishing the position of investigator.

The handling of the situation in that conference should have disposed of the entire situation, since the contention, desire and wish of the Employees was met by the Carrier. Unfortunately it did not. The Employees, not satisfied with having obtained what they wanted there, are now attempting to collect for claimant some additional money for which no commensurate service was performed, and for which there is no rule authorizing such payment.

In addition thereto they are attempting to obtain some additional money for employees in the Rate Bureau, apparently based upon an alleged violation of the September 18, 1951 agreement (Exhibit "B"). No losses have been shown by or for the employees in the Rate Bureau. Conversely, however, the reverse is true. In this circumstance, then, where is there any basis or justification for the claim set up in paragraph (c)? Obviously, there is none.

It is the position of Carrier that claim as set up in paragraphs (a), (b) and (c) of the Statement of Claim is without basis, justification or equity and should, therefore, be denied.

The substance of all matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim presents the question whether Claimant was required or permitted to suspend work during regular hours to absorb overtime in violation of Rule 44 of the Agreement. The claim is for payment at straight time for the periods during which Claimant suspended work on his own assignment and also for payment at time and one-half to the unnamed occupants of the positions on which the overtime was absorbed.

Claimant Sims was the occupant of an Overcharge Claim Investigator position which was created in January 1951 in Seniority District No. 4 primarily, but not exclusively, for the purpose of handling an accumulation of

cotton claims. The "Description of Duties" shown in the bulletin of this position included "rating" and "checking rates" in connection with the handling of claims. Claimant Sims apparently worked exclusively on this accumulation of cotton claims for about 23 months, except for the period January, February and March 1952 during which he also performed the work in controversy here. Claimant Sims' position was abolished in November 1952.

In September of 1951 by Special Memorandum of Agreement a Rate Bureau was created to perform work from Seniority Districts Nos. 2 and 4. Four initial positions were created and the work to be performed was specifically listed in four exhibits attached to the Memorandum of Agreement. This work was understood to be "interchangeable among the employees assigned in the Bureau"; and specific provision was made for the creation of additional positions in the Bureau to be allocated to, and bulletined in, Seniority District No. 4 if the volume of work should make it necessary to increase the number of positions over four.

During January, February and March 1952 overtime work was consistently performed by each of the occupants assigned to the four positions in the Rate Bureau. The aggregate overtime worked by them was 432 hours. During this same period and during his regular hours, Claimant Sims performed rate work in addition to handling the diminishing volume of cotton claims; and it is established by the record that the rate work so performed by Claimant Sims was work specifically described in the Memorandum of Agreement.

First. The description of duties in the bulletin of Claimant Sims' position is ambiguous. It can be argued with equal plausibility that the position included general rate work or that it included only such rate work as might be incidental to the handling of the cotton claims which were the principal subject of the assignment.

The Memorandum of Agreement, on the other hand, manifests a clear general intention to put the described rate work in the Rate Bureau. While it is true that the Memorandum of Agreement did not require the Carrier to transfer any additional work to the Rate Bureau, the work covered was specifically reserved to the four positions in the Rate Bureau. And while Rule 45 (a) gives preference to regularly assigned employees in the performance of overtime work, the Memorandum of Agreement provided that the work in the Rate Bureau would be interchangeable among the employees assigned in the Bureau. The necessary implication from this is that the work in the Rate Bureau was not interchangeable among those assigned and those not assigned in the Bureau. This conclusion is further fortified by the specific provisions which contemplated increase in the number of positions in the Rate Bureau.

Second. In this view of the record, the time used in the performance of Rate Bureau work constituted a suspension of the regular assigned duties of Claimant Sims' position to absorb overtime in the Rate Bureau within the meaning of Rule 44, for which he is entitled to be compensated at the straight time rate for the time he was suspended from his own regular assignment (Awards 3416, 3417, 3418, 4672, 4690, 4710, 5125 and 5258); and the regularly assigned employees in the Rate Bureau were deprived of the right to perform overtime work reserved to them by the Memorandum of Agreement and Rule 45 (a), for which they are entitled to be paid at the straight time rate.

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

The Agreement was violated as above found.

AWARD

Items (a) and (b) of the Claim sustained; item (c) sustained at the pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 3rd day of June, 1954.