

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway Clerks:

(1) That Carrier violated the rules of our currently effective Agreement dated January 1, 1950, in unilaterally shifting employees in the General Freight Agent and Car Accountant's Office at St. Louis, seniority district No. 13, from their regular assignments to perform the duties normally and traditionally attached to a higher rated position to clear up an accumulation of work, and refusing to compensate the employees temporarily assigned to the higher rated position or work at the higher rate.

(2) That the involved employees be paid monies due them for services performed at the rate attached to the desk or job of the Assistant Chief Per Diem Clerk, namely \$14.82 per day, less that paid to them for the service they perform at lesser rates or rates attached to their regular assignments, retroactive to February 1, 1954.

NOTE: Reparation due employees to be determined by joint check of Carrier's payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: The rules of our Agreement with the Carrier provide for seniority districts (Rule 5) and seniority rosters (Rule 6).

Seniority Districts Rule 5 embraces all employees in the office of the General Freight Agent and Car Accountant located at 12th and Poplar Streets, St. Louis, Missouri.

The current roster, January 1954, lists 49 employees in this office.

Although Mr. Turner's payroll title is that of Assistant Chief Per Diem Clerk the duties assigned to this position are in nowise whatsoever supervisory. To the contrary, he is assigned to clerical work incident to working up per diem claims exclusively. (See Employees' Exhibit No. 13-A.) Ordinarily there is no other employee in the per diem subdivision of this office engaged or assigned to the work attached to the Assistant Chief Per Diem Clerk's desk. There have, however, been occasions of infrequent occurrence where the work normally attached to the Assistant Chief Per Diem Clerk's desk was

Further proof of the fact that the handling of per diem claims is regarded as per diem work is the fact that the bulletins advertising the per diem jobs and the Assistant Chief Per Diem Clerk position list "per diem work" in the Brief Description of Duties. Copies are attached as Carrier's Exhibits B and C. Certainly if it had been considered that the handling of per diem claims was work requiring special ability, warranting a higher rate of pay, it would be expected that the work would be listed on the bulletin, but working per diem claims has never been set out specifically in the bulletin as part of the duties of any position. As previously outlined, the higher rate is compensation for his duties of a supervisory nature and commensurate with the title of the position.

The question of work being interchangeable between positions, that is, performed by clerks having different rates of pay, is not new to the Board. In Awards 2007 and 5911 similar claims were made and were denied. The following from Award 2007 is particularly apropos:

"It has been repeatedly held that it is the character of the work and not the name of the position that is controlling."

Inasmuch as the work in question is per diem work, an integral part of a Per Diem Clerk's assignment as shown by the bulletins covering the positions, and has been done by them for many, many years, there is no valid basis for the claims and they should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: Claim is here made for the pay attached to the position of Assistant Chief Per Diem Clerk by those employees who, it is alleged, were shifted to and performed the duties attached to such position in contravention of Rules 5, 6 and 48.

The petitioners assert that on two different occasions the position of Assistant Chief Per Diem Clerk was vacant and that they were assigned to work out a backlog of claims, the nature of which required knowledge and ability above and beyond that required in their normal assignments; while the respondent contends that the work in question was only that of Per Diem Clerk, rate \$14.12, which rate was paid to claimants.

It may be generally stated that per diem work is and can be described as: Working per diem claims and extending per diem.

The respondent insists that these duties are not exclusive to the position of Assistant Chief Per Diem Clerk, but are likewise the duties of the Per Diem Clerks. Petitioner asserts that Rule 48 is unique in that it provides:

" * * higher rated positions or work * * *"*

and

" * * occupying such positions or performing such work
* * *"*

An examination of the job content of the positions of Per Diem Clerk and Assistant Chief Per Diem Clerk reflects that the duties of each are to a large extent overlapping, thus clearly indicating that the work complained of was exclusive to neither position. Statements in the record from various claimants do not indicate that they performed any duties other than those included in the description of the duties of Per Diem Clerk. They have been compensated at the Per Diem Clerk rate.

The facts of record in this particular dispute cannot be said to come within the principles enunciated in Awards 4545 or 5252.

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 effective agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1955.