Award No. 7187
Docket No. CL-7270

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rules 3-B-1(a) and 4-C-1, Stores Department, Erie, Pa., Northern Division, by requiring K. F. Spongberg, Store Attendant, to suspend work on his position and work as a stores laborer.

(b) K. F. Spongberg be allowed three hours' pay for June 12, 1952, and eight hours' pay for June 24, 1952, on account of this violation. (Docket C-702)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station, and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance wih Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rule Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Mr. K. F. Spongberg, the claimant in this case, is the incumbent of position of Store Attendant, Car Shop Stores Department, Erie, Pa., on the Carrier's Northern Division. The Primary Duties of his position are advertised as follows:

"Inventory material, wait on counter, keep stock in order."

On June 12, and 24, 1952, the claimant was required to suspend his duties as store attendant, and was assigned duties of a stores laborer for approxi-

Rule 4-E-2 (a) in effect, also provides that when the rate of the position temporarily filled pays a higher rate the employe will be paid the higher rate and Rule 4-G-1 (b) provides that an employe required to work temporarily at other than his regular assignment will, in addition to his regular pay, be reimbursed for any additional expense incurred on account of the change, and will be paid at the pro rata rate for any additional time required in traveling to and returning from the temporary assignment. Thus, it can be seen that the aforesaid quoted Rules recognize the right of the Carrier to use a regularly assigned employe temporarily on other than his regular position so long as the correct rate structure is applied, and additional traveling time and expenses, if any, are paid. The Carrier contends that if it were not the intent of the parties to permit the temporary use of a regularly assigned employe on other than his own position, the method of payment provided in the above Rules when employes are so used would never have been included in the Agreement.

The Carrier submits that, in any event, the use of the Claimant under the circumstances here involved entitles him only to the compensation provided in Rules 4-E-2 and 4-G-1 referred to herein and there are no provisions of the applicable Agreement which can be construed as entitling the Claimant to payment of additional compensation such as that which the Organization is seeking to obtain in the instant dispute.

The Carrier submits that the Claimant has been properly compensated in the instant case under the applicable rules of the Agreement, and as a consequence thereof, the claim of the Employes for additional compensation is without foundation and should be denied.

III. **Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the use of the Claimant in the manner here involved did not violate the applicable Agreement; that such action was entirely proper under the specific provisions of the applicable Agreement; that the Claimant is not entitled to the additional compensation which he claims; and that the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made that Claimant Spongberg was improperly required to perform certain work in contravention of Rules 3-B-1(a) and 4-C-1 of the effective agreement.

Said Rules read as follows:

3-B-1 (a):

"Each Operating Division and, except as otherwise agreed, each System General Office Department shall constitute a separate seniority district and separate seniority shall prevail in each such district, by groups, as such groups are defined in the Scope of this Agreement."

4-C-1:

"Employes will not be required to suspend work during regular hours to absorb overtime."

The claimant held position of Stores Attendant, Group 2, with assigned duties: "Inventory Material, Wait on Counter, Keep stock in order."

On the dates in question (June 12 and June 24, 1952) the claimant assisted in stacking lumber in the yard and loading locomotive parts, stored in bins, on a car at the loading platform, which it is asserted could have been performed by a Store Laborer.

The duties of the Shipper and Receiver, Group 1, are described as "shipping and receiving material and work incident to these duties."

It is the performance of the named duties by the claimant, at the respondent's direction, and the performance by the incumbent of the Shipper and Receiver position of the duties of Store Attendant, including "waiting on counter," that forms the basis of the claimant's allegation that the above quoted rules were violated. The claimant further asserts that he was not reassigned for the purpose of "keeping him fully occupied in view of the assignment of the Shipper and Receiver to perform the duties ordinarily required of a Stores Attendant."

The respondent asserts that (1) the Shipper and Receiver had always been required to "wait on the counter" hence there was no crossing of seniority lines and (2) claimant performed work properly assignable to him which would not have been ordered performed on an overtime basis.

An examination of the Awards of this Division concerning the Absorption of Overtime Rule indicates that the ultimate decision in each was based on the resolution of a question of fact; or, putting it another way, each case was required to rest on its own bottom.

The criteria apparently applied was that no employe could be withheld from his regular assigned duties, and required to perform other duties, if the performance of such newly assigned duties had the result of depriving another employe, who might otherwise normally perform this work, of the opportunity of doing so on an overtime basis.

The work in question here consisted of stacking lumber and loading locomotive parts into a car. There is no evidence of record to indicate that exigencies of the service required that this work be performed at the time in question, to the contrary it appears that it might have been held over and performed at some other time or later date.

Certainly the work involved was of a type that a Stores Attendant was reasonably expected to perform.

The facts of record do not show beyond the realm of speculation and conjecture that the claimant would have actually worked overtime performing other duties of his position. Award 7167.

There is likewise no evidence of record to indicate that the claimant's position included the exclusive right to "wait on counter" which it is asserted

was improperly performed by the Shipper and Receiver. The bulletin of the position of Shipper and Receiver clearly includes these duties. They were not improperly performed by him.

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 Employes involved in this dispute are respectively carrier and employes 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 did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1955.