Award No. 8428
Docket No. CL-7820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) Carrier violated the Rules of the Clerks' Agreement at Picacho and Eloy, Arizona, when between March 10 and April 4, 1952, both dates included, it required Robert L. Tapley, Freight Clerk, Picacho, to suspend work on his position four (4) hours each day in order to go to Eloy to perform duties assigned to Cashier Position No. 5 for the purpose of absorbing overtime formerly performed by incumbent Horace C. Hoben.

(b) Clerk Tapley be allowed additional compensation at the rate of his regular assignment for four (4) hours each day from March 10 to April 4, 1952, both dates included, that he was withheld from his position and required to perform service on Cashier Position No. 5 at Eloy.

(c) Cashier Horace C. Hoben, Eloy, be compensated three and one-half (3½) hours' additional compensation at the time and one-half rate of his assigned position each day from March 10 to April 4, 1952, both dates included, that he was not used for overtime service required on his position when Clerk Tapley was used therefor.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its Employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, bearing effective date of October 1, 1940, which Agreement, including revisions (hereinafter referred to as the Agreement) was in effect on the dates involved in the within claim. A copy of such Agreement is on file with the Board and by reference thereto is hereby made a part of this dispute.

2. Prior to March 10, 1952, Claimant Robert L. Tapley was regularly assigned to Position No. 6, Freight Clerk at Picacho, Arizona, hours 7:00 a.m.

CONCLUSION

The Carrier asserts that it has conclusively established that the claims in this docket are entirely lacking in either merit or agreement support and requests that said claims be denied.

Without prejudice to carrier's position that there is no merit to the claims presented, the Board's attention is directed to the fact that these claims involve a double penalty, and the fact that this Board has consistently denied double penalty claims. See Awards 2695 and 2859.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 18, 1952, Carrier bulletined new position of No. 6 Freight Clerk to work at Picacho, Arizona, Monday-Friday 7:00 a.m.-4:00 p.m., and on February 27, 1952, awarded it to applicant Tapley, the first of the two claimants listed in the instant case. On March 7, 1952, nine days later, Carrier gave 36 hours' written notice to Tapley at (1) the hours of the position would, at the end of said 36 hours (March 10), be changed to 12 noon-9:00 p.m. (meal time 4:00 p.m. to 5:00 p.m.); and (2) at 5:00 p.m. he should go to Eloy, Arizona, (about 4 miles away) to perform work to be assigned by the Agent there, leaving Eloy in time to get back and check out at Picacho at 9:00 p.m. Said changed hours and assignment continued until April 4, 1952, when Freight Clerk Position No. 6 was abolished.

Before and during Tapley's original and changed tenure at Picacho, Cashier Position No. 4 at Eloy was filled by regular occupant H. C. Hoben, second claimant in this case. His work-week was Monday-Friday, his daily hours 7:00 a.m.-4:00 p.m. During the seasonally busy week prior to March 10, 1952, Hoben on his five regular days worked 22¼ hours of overtime on billing. During the four (also seasonally busy) weeks embraced in the two instant claims he averaged only 11¼ overtime hours on his regular work-days.

The Employes make two main contentions: (1) Carrier caused Tapley to suspend work during the regular hours of his own Picacho position, as bulletined originally, in order to absorb overtime work properly belonging to Hoben at Eloy, thus violating Rule 22. (2) Carrier also violated bulletining Rule 33(c) when it changed the hours and location of Freight Clerk Position No. 6 at Picacho.

Carrier relies on (1) Rule 16, which specifies Carrier's right to change the starting time of a position on 36 hours notice; (2) Rule 18, which protects employes as to compensation and expenses when working away from "home"; (3) Rule 42(a), which allows an employe to displace a junior employe if the former does not like a change in work hours; and (4) previously uncontested past practice similar to Carrier's action in instant case.

Four related questions are raised by these two claims and the arguments advanced in connection therewith. First, under the Parties' Agreement does Carrier have the right in general to change the hours of a position? The general answer is that Rule 16 grants this right as such, if 36 hours notice is given. Second, does Carrier in general have the right under the Agreement to require the incumbent of a position to work at two locations when the original bulletin of the position specified only one location? The general

answer, given in a number of awards in which we concur, is that nothing in the Agreement prohibits same, particularly if the starting and ending location is the same and if the work in both locations is similar (in the same group) and in the same seniority district. Third, under the Agreement does Carrier in general have the right to add to, subtract from, or otherwise change the duties originally assigned to a position and its incumbent? The general answer, also supported by a number of awards, is affirmatively the same as that given to the second question above. The net effect is that Carrier can in general do any of these three things without creating a new position that has to be re-bulletined.

The fourth and critical question brings together the first three questions and their answers in terms of the particular circumstances of the instant case. Here the Carrier changed the hours of, added a location (Eloy) to, and added billing duties to the work as originally bulletined of Freight Clerk Position No. 6 at Picacho. If, with changed starting time, Tapley had worked all eight hours at Picacho, this case would not have arisen. If, with changed starting time, Tapley had been given additional duties at Eloy which did not seem to impinge on the work of any position already there, this case would probably not be here. But Carrier changed the starting time and added the location and duties in such a way that (1) Claimant Tapley now worked only four hours at Picacho on the duties that formerly were supposed to occupy him eight hours; (2) the daily overtime work previously done at Eloy by Claimant Hoben was halved; and (3) the halving was caused at least in large part by the evening addition of Tapley to the Eloy staff. Is it possible that here the whole was greater than the sum of its parts; that is, did the three things—each a separate right of Carrier in general terms—constitute together a violation of the Agreement in the factual context of this particular case?

Given the rulings above that Carrier was empowered to change the starting time of and to add a location and duties to the Picacho Freight Clerk Position No. 6 without re-bulletining the changed work as a new position, the issue of Agreement violation comes down solely to whether there was a ravishment of Rule 22. Was Tapley in fact and effect required to suspend work on his own position to absorb the overtime work that otherwise would have accrued to Hoben's position?

The exact words of Rule 22 are, "Employes shall not be required to suspend work during regular hours to absorb overtime." We suppose that an essay of some length might be written about the meaning intended by this "clear" language. Doubtless the original intent was to prohibit a carrier from taking a particular employe off his job during a given day while work was slack thereon and then getting him back for work after the end of his regularly scheduled work-day so that the total of his hours would not exceed eight, e.g., 8—4+4=8. If this were the only intent, the Rule should read "An employe shall not be required to suspend work on his own position during his regularly scheduled hours so as to absorb overtime thereon". The fact that the Rule, however, uses the plural of "employe" provides the opportunity to consider more complicated situations, as when a carrier takes an employe off his own assigned work and gives him some of the work of another position that would, if performed by the regular incumbent, have to be paid at overtime rates. For a situation like this, the Rule may be read, "Employes shall not be required to suspend work on their positions during their regular hours so as to absorb the overtime work otherwise accruing to any one of their positions."

Numerous awards of this Division have dealt with the latter, broader sort of situation. One of the definitive opinions thereon is said to be found

in Award 5331, wherein previous awards are summarized to say that "requiring an employe to suspend work on his assignment and perform work of other positions which work would otherwise have had to be performed on an overtime basis" violates the Rule "if the work involved was not assigned to the positions of the claimants".

So far as can be reasonably inferred, the "claimants" referred to in the quotation above were employes who were required to do the work, not those who were deprived of overtime thereby. As regards the instant case, this would be Tapley. Was the work involved here (at Eloy) assigned to Tapley? Not originally, certainly; but on March 10, 1952, and thereafter (till April 4, 1952), yes. It follows that, as regards Tapley, Rule 22 in the instant case was not violated. He cannot be said to have suspended work during the regular hours of his changed assignment.

Award 5331 says nothing directly helpful about the situation in which the other claimant here, Hoben, was involved. But, if Tapley is held not to have suspended work during the regular hours of his changed assignment, then the overtime work that Hoben would have worked in the absence of such change cannot be said to have been lost because of a suspension of Tapley's work. Rule 22 was not violated in respect to Claimant Hoben.

The Board rules that neither claim can be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Agreement.

AWARD

Claims (a), (b), and (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1958.