

Award No. 11981
Docket No. CL-11582

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Except Boston and Albany Division)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, on the New York Central Railroad Company, Eastern District (Except Boston Division):

1. That Carrier violated and continues to violate the Clerks' Agreement when it denied and continues to deny certain employes of the Reservation Sales Bureau, Grand Central Terminal, New York, N.Y., the same rate of pay as the employes in the Industry Service Desk.

2. That Carrier be required to compensate:

Margaret Shea	Ida Carlson
Fred T. C. White, Jr.	Lillian Coffee
Catherine T. Ryan	Marian L. Smith
Dolores M. Naitre	Adelaide Taggart
Ruth McLinden	Margaret M. Gregg
Evelyn D. Hough	Marion P. Kurrus
Eva C. Peterson	Agnes N. Sullivan
Florence Walsh	Ernest E. Collins
Margaret E. Holland	Maria Pesick
Lucy B. Shaw	Francine Hutwohl
Michael Foley	Pearl Crusius

Katherine Lawrence	Margaret M. Dempsey
Gladys E. Friedman	Ella T. Butterfield
Georgia Walpeen	Neal R. Goldner
Angelo Kahlsdorf	John F. Bailer
Barbara Peterson	Leonore Tengney
Gloria M. Isola	Myles Reddington
Paul Rosner	Patricia E. Giordano
Harry J. Harvey	Adelaide Centrello
Elizabeth T. Larkin	M. McKay
Mary C. Sluga	Frank D. Perez
Marion J. Garvin	Alice H. Cody
D. J. Fiore	James F. Moat
Antoinette Doherty	Margaret C. Bagley
Neil H. Blauvelt	Louis W. Goodman
Frank Goraley	Margaret M. Owens
E. L. Wetherbee	Grace R. Markham
Elizabeth A. Buhler	David P. O'Shea
Alyn Conover	June M. Earnst
Jean D. Jordan	

or their successors, at the same rate of pay as the employes in the Industry Service Desk, from July 2, 1957 to the date when this violation will have been corrected.

EMPLOYEES' STATEMENT OF FACTS: Effective June 17, 1957 the Carrier, following an understanding reached with the Organization, created and adopted a new method for the handling of the passenger traffic requirements of certain industrial firms in New York, N.Y., and accordingly, a new department was created for this purpose in the Reservation Sales Bureau at Grand Central Terminal, New York, N.Y.

Also, in accordance with the understanding, five positions were created, carrying a rate of \$400.00 per month.

The work of this newly created Industrial Service Desk expanded to such an extent that the Carrier directed that, effective July 2, 1957, all Reservation Clerks perform the work and duties of the Industry Service Desk, and the work is still being performed by them.

Claim was presented by representatives of the Clerks' Organization for the difference in rate between the \$400.00 per month and the monthly rates of the 59 individuals, in whose behalf the claim was filed, on the basis that the five \$400.00 rates had been agreed upon and created for a specific purpose

In Award No. 8369 — Referee Lynch held:

"Because the Organization has failed, in the record here before us, to prove that the work in question belonged exclusively to telegraphers, this claim will be denied."

In Award No. 8312 — Referee Cluster held:

"Manifestly, unless the record supports the conclusion that the work of issuing the brass out of the freight car could not be performed properly under Agreement rules by Temple in the course of his assignment, the claim cannot be sustained. Petitioner asserts that Temple can issue stock only out of the storeroom after it has been unloaded and placed there by the labor gang; only the labor gang can take it out of the car. These assertions are based apparently on the existence of the unloading assignments and on customary practice on the property. However, we do not think that the burden of supporting these assertions is met by the evidence in the record. In our view, Temple did not suspend work on his own assignment; nor did he perform rest day work of the foreman's or laborers assignments. He was not assigned to unload the freight car. He was presented with a requisition which was his duty to fill as a normal incident of his assignment as Issueman. He performed the same work with regard to the brass as if it had been in the storeroom — checking it and handing it out. Accordingly, the claim must be denied."

There are many, many awards to the same effect.

Each of the above awards could very appropriately be applied to the instant claims, for Carrier has shown that the Reservation Bureau clerks did not perform the work of the Industry Desk clerks but simply performed a duty that could rightfully be required of them, without such being an encroachment on the duties of others, or duties that would require an increase in rates.

CONCLUSION

Carrier has shown that claimants did not perform the duties of the Industry Desk clerks, and because of that no disruption of the rate structure, such as here contended, should be granted; that Petitioner has failed completely to prove his point, and therefore, the claim is without merit and should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim is that the Carrier violated the Clerks' Agreement when it assigned Clerks of the Reservation Sales Bureau to perform the same duties as Industry Service Clerks, a higher rated position, and declined to pay them the higher rate.

The parts of Clerks' Agreement involved here are as follows:

"Rules 38 — Preservation of Rates

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such posi-

tions; employes temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

"This will not apply in case of sickness or vacation when absent employee is paid during such absence."

Carrier contends that the 59 Claimant Clerks were not actually doing all of the work of higher rated positions but were there merely assisting the 5 Industry Service Clerks part of the time. That they did fill out some forms when dealing with "individual customers" but that their increase in duties were infinitesimal.

It has been held many times that an employee assigned to a higher rated position is not required to fulfill and perform all the duties and responsibilities of the higher rated position. See Award 4545 (Wenke), 6129 (Jasper), 10704 (Hall), 2785. It is admitted the Reservation Clerks were directed on July 2, 1957, by Carrier to perform work and duties of the Industry Service Desk.

The fact that Carrier directed 59 reservation clerks to assist 5 higher rated clerks establishes that Carrier did consider the quantity of the work to be substantial enough to warrant such action. The further fact that it was continuing on November 18, 1959, as shown by Carrier's ex parte submission, proves that it was not just a "temporary increase in the volume of work", on the Industry Service Desk.

We have read awards cited by the Carrier and find them to be on a different factual basis.

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

That the parties waived oral hearing;

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 Agreement was violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.

**CARRIER MEMBER'S DISSENT TO AWARD 11981
DOCKET CL-11582**

The record does not support the conclusion of the majority that:

* * * "The fact that Carrier directed 59 reservation clerks to assist 5 higher rated clerks establishes that Carrier did consider the work to be substantial enough to warrant such action."
(Emphasis ours.)

The record definitely fails to substantiate such an assumption or assertion on behalf of the majority. There is no proof that any one of the 59 Claimants performed any part of the work of the higher rated positions. None of the Claimants were temporarily or permanently assigned to higher rated positions. There is no allegation of "de facto" temporary assignments. There is no rule providing for pay for higher rated work, only for work on higher rated positions. The record shows that handling of customers of the Industry Service Desk by the reservation clerks was as follows:

"If some firm listed as a customer of the Industry Service Desk would call in during the off-duty hours of such facility, the Reservation Clerk, handling the call, would handle it in exactly the same manner as he would handle any other call coming from an individual or small account." (Emphasis ours.)

which was not denied or refuted by the Petitioner.

Further, the following exception contained in Rule 38 makes it inapplicable in this case:

"Assisting a higher-rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment."

Since the Petitioner failed to prove its case, it is not the duty of the majority to assume that 59 reservation clerks were doing part of the work of the higher rated clerks. We must have proof that this is a fact and not an assumption. Therefore, for these reasons, as well as the reasoning in our prior awards, we dissent.

R. E. Black

R. A. DeRossett

W. F. Euker

G. L. Naylor

W. M. Roberts

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Interpretation No. 1 to Award No. 11981

Docket No. CL-11582

Name of Organization:

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

Name of Carrier:

**THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Except Boston and Albany Division)**

Upon application of the representatives of the employees involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made.

The Organization contends that the Carrier has not fully complied with the Award made in behalf of fifty-nine Claimants and has so construed the Award that its benefits have been denied to twenty-five of the Claimants. The Organization asks if that was the meaning of the Award.

The Award made in this case had the effect to sustain all claims of the fifty-nine specifically named Claimants, and it was so intended.

Now, after the record is closed and the major part of the Award complied with by the Carrier, it asserts for the first time that twenty-five of the fifty-nine Clerks did not do the work of the higher rated industry Clerks and, therefore, should not be paid. That is the same argument Carrier made before this Board as to all fifty-nine Clerks. It was all or none. That was the issue. Carrier did not raise the issue before the Board that there were any of the fifty-nine Clerks who stood on a different fact basis. It has placed its own interpretation on the meaning of the Award.

The Award is not ambiguous. It is plain and made no exceptions. To make an exception now as to twenty-five of the Claimants, by way of interpretation, would virtually be a reversal by the Board of its Award to that extent. This Board has held that its Awards are final. Interpretation No. 1 to Award No. 6902. Interpretation No. 1 to Award No. 11676.

Referee Jim A. Rinehart, who sat with the Division as a neutral member when Award No. 11981 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1965.