

Award No. 11982
Docket No. CL-11594

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 ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

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

(a) That Carrier violated rules of the Clerks' Agreement at the San Bernardino Store when it required and permitted Sectional Storekeepers, positions wholly outside the scope rule of the parties' agreement, to perform clerical work incident to recording certain inventory information on Form IBM G-19482 Material Inventory Card commencing on or about August 25 and continuing until about September 5, 1958; and

(b) That the following named clerical employees in the San Bernardino Stores be paid the wage loss they sustained at overtime rate attached to their regular assignment which is the equivalent number of hours that was spent by the Sectional Storekeepers in the performance of clerical work that properly belonged to claimants, namely:

C. R. Lane — 62 hours

C. P. Sykes — 80 hours

R. R. Beattie — 80 hours

L. A. Heglund — 40 hours

D. Valigura — 40 hours

EMPLOYEES' STATEMENT OF FACTS: Prior to the year 1958, Carrier augmented its regular force clerical workers in the Stores Department at San Bernardino, California, to handle the clerical work incident to recording the necessary data required of quantity of the various types, etc., of material and supplies on hand for inventory purposes. Ordinarily, this force comprised four clerical positions for a period of from four to six weeks' duration.

C. R. Lane	26 hours
C. P. Sykes	62 hours
R. R. Beattie	54 hours
D. Valigura	23 hours
L. A. Heglund	25 hours

Total — 190 hours

Such an exorbitant claim completely disregards the repeated holdings of this Board that the performance of work by someone other than those entitled to perform it only entitles the claimant to be reimbursed for the time actually devoted to the complained-of work. Please see Third Division Awards 1300, 3583, 3906, 5196, 5785, 5790, 6528, 6544 and 7222. Furthermore, Part (b) of the Employees' claim also seeks payment of the punitive (time and one-half) rate in complete disregard of the well established principle, consistently recognized and adhered to by the Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an agreement. In this respect, please see Third Division Awards 3251, 4244, 4645, 4728, 4815, 4828, 5195, 5437, 5764, 5929, 5967 and 7242 and many others.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without merit or support under the rules of the Clerks' Agreement and should be denied in its entirety, for the reasons herein expressed.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Employees' ex parte submission in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves work in making inventory in Carrier's San Bernardino Store. Prior to 1958 there existed four clerks positions which performed work of filling out Inventory Form 1127 which was a part of the annual inventory work. The taking of inventory had never been exclusively work of the clerks either on the property or industry wide and Carrier says that it also comes under an exception to the Scope Rule (which lists positions only) which permits those outside the agreement to perform work incidental to their own position and duties. That the taking of inventory of stock in his store was incidental to the duties of a Sectional Storekeeper and in the past they helped make inventory.

In 1958 Carrier eliminated Form 1127 and used an IBM card instead. It did not use clerks to fill out the IBM cards but used the Sectional Storekeepers. The clerks say the identical information which prior to 1958 they had written on Form 1127 was thereafter written on the IBM Card by the Sectional Storekeepers. That the work was not new or different that it was just put on a different kind and colored form and that it makes no difference what was done by Carrier with the card thereafter.

They further say that the inventory had already been taken before the cards were filled out and that Carrier by that time knew what it had in inventory and that the filling out of the cards was just plain clerical work belonging to the clerks.

At panel discussion the Organization most forthrightly and sincerely argued that the copy work done by the Sectional Storekeepers was simply transferring information from other forms to the IBM Inventory Cards after all the counting, measuring and weighing had been completed and therefore Award 2013 — Shaw and Award 3584 — Rudolph did not apply here.

We cannot agree with that argument. Webster's Dictionary defines the word inventory, "A catalogue or schedule of the property of a person or an estate; hence, an itemized list of goods with their estimated worth;". Until the various forms had finally been compiled into a finished document the inventory had not been completed. Inventory contemplates a completed schedule signed by some one authorized and qualified to do so, certifying that the same is true and correct. Until that has all been done the inventory is still in the process of being made. Award 2013 — Shaw, said:

"There is nothing in the rules to prevent the Carrier from using any or all of its employees in any capacity on the taking of an annual inventory,"

The award was adopted more than 20 years ago and has not been overruled or rejected but has been followed in Award 3584 — Rudolph, in a case where the Clerks Organization claimed the agreement was violated when inventory work was done by a Stockkeeper. Having decided the filling out of the IBM Inventory Cards was a part of making the inventory, Awards 3584 — Rudolph and 2013 — Shaw should be regarded as controlling here.

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 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

That the Agreement was not violated.

AWARD

Claim denied.

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.

LABOR MEMBER'S DISSENT TO AWARD 11982
DOCKET CL-11594

In the instant Award the proposition put by Referee Elwyn R. Shaw, Award 2013 and later adopted by Referee Herbert B. Rudolph, Award 3584, that there is nothing in the rules to prevent Carrier from using any or all of its employees in taking the annual inventory was expanded beyond all reasonable proportions. Those Awards were accepted as allowing a reasonable "implied exception" due to the premise upon which they were based. That premise was, briefly stated, that in order to get an accurate check of material and supplies it was logical that all available employees should be used so that an inventory of the stock, i.e., the items measured in whatever appropriate units, could be taken with as little turnover as possible. In effect, rather than suspend operations, all hands were called upon to complete the counting, weighing, measuring, etc., required as of a specific point in time, e.g., in this case, as of close of business August 31.

The employees were not here arguing about the reasonableness of the logic behind the need for such implied exception. They understood the matter and had accepted it; however, in the instant case there was a proven past practice which showed that Carrier had, each year until 1958, assigned the work here involved (in fact had created clerical positions specifically for the purpose of performing same) to employees covered by the Clerks' Agreement. When the Carrier, for the first time in 1958, assigned and/or permitted employees excepted from the Agreement to take over and perform the routine clerical work of transposing numbers from tally sheets, etc., to IBM cards which were then, as before, sent to the General Accounting Office for processing, the Employees filed claim. This work, notwithstanding either Mr. Webster or the Referee, does not have the urgency nor does it need to be done quickly to avoid "turnover", upon which the original implied exception was premised. This routine clerical work was not required to be completed until December 31 and was not undertaken until after the actual counting, measuring, etc., had been completed. It therefore was clerical work which, by custom, tradition and practice, or any other test, had been assigned to employees under the Clerks' Agreement.

In short, all inventory work does not have the magical qualities the Referee here imputes to it. Were Referee Shaw still available the Employees are quite sure that he (as did Judge Swacker who later modified his Award 615 by his Award 636) would have rejected the strained interpretations placed on his logical reasoning and limited the "exception" to what was intended.

Employees assert that this Award is not in keeping with the proposition of "fairly construing" either the language of the Agreement or Awards 2013 and 3584.

Award 1982 cannot be accepted as a proper interpretation of the Rules, facts and circumstances here involved, and for the above and other reasons I therefore dissent.

D. E. Watkins [1-29-64]