Award No. 12332
Docket No. CL-12004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violates current Clerks' Agreement at Temple, Texas, when it requires Car Clerk C. W. Hamilton to vacate his regularly assigned position for one (1) hour and thirty (30) minutes, each Tuesday, Wednesday, Thursday and Friday of each week and go to Passenger Station and sell tickets and other work incident to such service; and,

(b) C. W. Hamilton shall now be paid the difference between $18.62 per day and $19.51 per day, for one (1) hour and thirty (30) minutes on each Tuesday, Wednesday, Thursday and Friday of each week, from June 9, 1959, forward until the violation is corrected; and,

(c) C. W. Hamilton shall now be paid, in addition to any pay already received, one (1) hour and thirty (30) minutes at rate of $18.62 per day for each Tuesday, Wednesday, Thursday and Friday of each week, from June 9, 1959, forward until the violation is discontinued.

EMPLOYES' STATEMENT OF FACTS: There are two (2) separate agencies maintained by the Carrier at Temple, Texas. A Ticket Agency at the Passenger Station, under the supervision of Agent Perry, who is covered by the Telegraphers' Agreement and some 400-500 yards away, a Freight Agency, under the supervision of Agent DuBois.

For a number of years, the day force in the Ticket Office at the Passenger Station consisted of Ticket Agent Perry and Ticket Clerk Position No. 158, assigned 9:00 A. M. to 6:00 P. M. and which, prior to its abolishment, was occupied by Ticket Clerk C. W. Hamilton. Position No. 158 and the Night Ticket Clerk Position No. 151, assigned 7:30 P. M. to 4:30 A. M., were covered by the Clerks' Agreement.

After the abolishment of Ticket Clerk Position No. 158, Ticket Agent Perry has never been able to properly and efficiently give proper service to

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is entirely without merit or support under the governing agreement rules and it should be denied in its entirety for the reasons set forth herein.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintains a Ticket Agency in the passenger station and a Freight Agency in the freight office at Temple, Texas. The distance between the two offices is about one-fourth of a mile. Prior to April 21, 1958, a Ticket Agent, a Day Ticket Clerk in Position No. 158 and a Night Ticket Clerk in Position No. 151 were assigned to the Ticket Agency. Ticket Clerk Position No. 158 was abolished on April 21, 1958.

Claimant, who was the occupant of Ticket Clerk Position No. 158, exercised his seniority rights under the Agreement, and he was assigned to Car Clerk Position No. 165 at the Freight Agency. Effective June 9, 1959, Carrier required and directed Claimant to assist the Ticket Agent in the passenger station for one and one-half hours each Tuesday, Wednesday, Thursday and Friday. Claimant's assigned hours as occupant of Car Clerk Position No. 165 was from 8:00 A.M. to 5:00 P.M., Monday through Friday. He worked that position before and after he assisted the Ticket Agent with ticket sales on each Tuesday through Friday, and he was paid eight straight time hours at his Car Clerk rate of pay for each day of the week he worked.

Claimant performed the dual services as directed until July 1, 1959. From July 2 to July 20, 1959, he worked Night Ticket Clerk Position No. 151 while the regular assigned employe was on vacation. After July 20, 1959, he continued to assist the Ticket Agent with ticket sales for about one and one-half hours each Tuesday through Friday until August 26, 1959, after which the Ticket Agent alone handled the ticket sales, and Claimant returned to full-time work as Car Clerk in Position No. 165.

Petitioner cites several rules which the Carrier has allegedly violated. Principally, Petitioner emphasizes the fact that Claimant's regular duties as Car Clerk did not include ticket selling nor the other work "incidental thereto at the passenger station." Claimant, Petitioner argues, "was required to suspend work on his regular assignment in order to perform such ticket work, while other employes protected the work of his regular assignment."

Three basic but related questions are pertinent to the consideration and the determination of the claim. First, does Carrier have the right to change the work content of Car Clerk Position No. 165? The answer is in the affirmative if this is not contrary to the provisions of any rule of the applicable Agreement. Petitioner has cited no rule to support its position that Carrier may not do so. In Award 8428 we held that this may be done "without creating a new position that has to be rebulletined." Second, does Carrier have the right to require the Claimant to work in two places? In the absence of any rule in the Agreement to the contrary, the answer is again in the affirmative. This is so even though the original bulletin specified only one location. It is particularly so if, as here where the work started and ended at the same location, and both the passenger station and the freight depot were in the same seniority district. Although the awards of this Division are not unanimous, the later and better considered uphold this principle. See representative Awards 11660, 11594, 11294, 10950 and 8428.

The third and the most pertinent question is, did Carrier require Claimant to suspend work in order to absorb overtime? Article VII, Section 6, of the Agreement reads:

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

There is no convincing evidence in the record that Carrier violated this rule. Claimant's absence from his work at the freight depot for one and one-half hours, four days a week, was not to avoid paying overtime on his own assignment. When he sold tickets at the passenger station, he was assisting the Ticket Agent, who is not covered under the applicable Agreement. There was no Day Ticket Clerk who was deprived of overtime pay because Claimant sold tickets during the four days of the week. Nowhere in the record is there affirmative and probative evidence that Claimant's assignment to sell tickets in the passenger station was made to absorb overtime. Claimant sold tickets only to accommodate passengers departing from Temple on Passenger Train No. 16. The train left Temple at 11:31 A. M. and Claimant sold tickets for approximately an hour prior thereto. No overtime could have been involved.

Petitioner also contends that Carrier violated Article XI, Section 3-a, of the Agreement which provides that employes who are "temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions; . . ." The rate for the position of Ticket Clerk was 89 cents a day higher than the rate for the position of Car Clerk. Carrier did not pay Claimant the higher rate for the one and one-half hours he worked each of the four days selling tickets. On December 9, 1942, the parties executed a letter of understanding giving interpretation to Article XI, Section 3-a. The letter is in the record in its entirety. It will serve no useful purpose to set it out here. It is sufficient to note that by the terms of this interpretaion Carrier was not obligated to pay Claimant the higher rate for the time he sold tickets. Claimant assisted the ticket agent only during a temporary period of increased passenger service on Train No. 16.

Claimant was paid eight hours at the Car Clerks' rate for each day he worked. He is not entitled to receive additional pay of one and one-half hours at the Car Clerks' rate for each day he worked selling tickets. There is no basis for such a claim. Petitioner has cited no rule or practice to justify such a claim.

On the basis of the record, there is no justification for the allowance of the claims.

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 the 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) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.