

Award No. 12333
Docket No. CL-12065

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:

CLAIM 1

(a) Carrier violates current Clerks' Agreement at Temple, Texas, each Thursday and Friday, of each week, when it denies Gus Wauer the right or opportunity to sell tickets and perform other work incident to such, for Train No. 16; and,

(b) Gus Wauer shall now be paid a call of two (2) hours at time and one-half at rate of \$19.51 per day, for each Thursday and Friday of each week, from June 11, 1959, forward, until the violation is corrected.

CLAIM 2

(a) Carrier violates current Clerks' Agreement at Temple, Texas, each Tuesday and Wednesday, of each week, when it denies M. P. Brookerson the right or opportunity to sell tickets and perform other work incident to such, for Train No. 16; and,

(b) M. P. Brookerson shall now be paid a call of two (2) hours at time and one-half at rate of \$19.51 per day, for each Tuesday and Wednesday of each week, from June 9, 1959, forward until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains two (2) separate Agencies at its Division headquarters, 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 (3 city blocks plus) away, a Freight Agency, under the supervision of Agent DuBois, a supervisory agent.

The day force in the Ticket Office at the Passenger Station, for number of years, consisted of the Ticket Agent and Ticket Clerk Position No. 158,

on part (c) also would represent a double penalty. In this instance, however, the Union's contention must be rejected on the additional ground that the evidence does not show that Clerk Perfect was used to fill a Sunday vacancy in Position B-12-G."

The Board will readily recognize that the Employees' claims in this dispute and the claim in behalf of Car Clerk Hamilton, referred to on Page 9 hereof, constitute duplicate or pyramided penalties for the same alleged violation and should not be allowed.

In conclusion, the Carrier respectfully reasserts that the Employees' claims in the instant dispute are entirely without merit or support under the governing agreement rules and should be denied in their entirety for the reasons set forth herein.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts that gave rise to the instant claims are the same as those which are fully set out in Award No. 12332. Here, however, Claimants contend that they were denied overtime work because Hamilton, who was assigned to Car Clerk Position No. 165, was directed by the Carrier to assist the Ticket Agent in selling tickets at the passenger station one and one-half hours each Monday through Friday from June 9, 1958 to and including August 26, 1958.

Claimant, Gus Wauer was regularly assigned to Ticket Clerk Position No. 151. He was scheduled to work from 7:30 P. M. to 4:30 A. M., Thursday through Monday with rest days on Tuesday and Wednesday. Claimant, M. P. Brookerson was regularly assigned to Rest Day Relief Position No. 4. He relieved the following employees:

Location	Pos. No.	Occupation	Hours	Day of Work
Clifton	221	Clerk	8:30 AM - 5:30 PM	Mon
Temple	151	Ticket Clerk	7:30 PM - 4:30 AM	Tues
Temple	151	Ticket Clerk	7:30 PM - 4:30 AM	Wed
Temple	152	Night Baggage man	8:00 PM - 5:00 PM	Thurs
McGregor	206	Clerk	8:30 AM - 5:30 PM	Sat

His rest days were Friday and Sunday.

Claimant Wauer is requesting pay for a call of two hours at time and one-half the Day Ticket Clerk's rate for each Thursday and Friday when Hamilton assisted in selling tickets at the passenger station. Similarly, Claimant Brookerson is requesting the same compensation for each Tuesday and Wednesday.

We have held in Docket CL-12004 that (1) the Carrier had the right to add the one and one-half hour ticket selling duties to Hamilton's regular work assignment; (2) that Carrier had the right to require Hamilton to work in two places; (3) that Hamilton did not suspend work to absorb overtime. Each of these are fully discussed in that case.

Petitioner urges that the footnote to the instructions issued by Carrier's Superintendent on June 5, 1959, clearly and conclusively establishes the fact that the sole purpose of using Mr. Hamilton was to stop Claimants from a call and thus Hamilton's use was to absorb overtime. The footnote referred to reads:

"We can only use Mr. Hamilton four days weekly, above mentioned, as his rest days are Sunday and Monday. If you see that you are going to need some help on Saturdays and Sundays, you should call out your night man to render you any assistance necessary and allow him call."

There is nothing in this statement to support Petitioner's position. Since Carrier had the right to assign Hamilton to temporarily assist the Ticket Agent, and since Hamilton did not suspend work to absorb overtime, there is no basis for the assertion that his assignment was to stop Claimants from a call. The mere fact that Carrier may have called Claimants during any day period when Hamilton was not on duty selling tickets does not obligate Carrier to call Claimants on each of the days Hamilton worked in the passenger station.

Award No. 15 of Special Board of Adjustment No. 174, cited by Petitioner is not applicable. Claimant in that case held a regular relief position. "The only days he was assigned to the yard office were Sundays and Mondays when he relieved the first trick yard Clerk." When the second trick yard clerk position required assistance on the Thursday and Friday involved in the claim, Carrier used the employe on the "regular assigned relief position that relieved the third trick train checker on Thursday and the third trick yard clerk on Friday". The Special Board properly held the relief employe so assigned had preference to Claimant. Claimants in the instant case had no such preferred rights.

Similarly, in Award 5125 bookkeeping employes were used to assist clerical employes whose primary duties were to calculate piecework charts for payroll purposes. We held that the bookkeeping employes were required to suspend work to absorb overtime. The clerical employes were deprived of overtime because of the assignment of the bookkeeping employes to assist them. If overtime was necessary in the position of selling tickets, the Ticket Agent and not Claimants would have been deprived of such overtime.

For all of the foregoing reasons, we conclude that there is no merit to 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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claims 1 and 2 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.