

Award No. 13811
Docket No. CL-13954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5319) that:

1. The Carrier violated the Clerks' Agreement, particularly Rules 44, 50 (a) and related rules, when it suspended Mr. E. O. Fertsch and Mr. C. R. Montgomery from their regular assignments as Claim Investigator-Delivery Clerks to perform duties of Cotton Clerk.

2. Mr. E. O. Fertsch now be paid the Cotton Clerk rate of \$22.06 per day for the dates of December 4, 5, 6, 14, 15, 20 and 21, 1961.

3. Mr. C. R. Montgomery now be paid the Cotton Clerk rate of \$22.06 per day for January 3, 1962.

4. Mr. H. N. Geary be paid at time and one-half rate of Cotton Clerk position for additional hours on dates named below and which is in addition to his regular assignment on such dates:

December	4, 1961	- 8 hours
December	5, 1961	- 8 hours
December	6, 1961	- 4 hours
December	14, 1961	- 6 hours
December	15, 1961	- 4 hours
December	20, 1961	- 4 hours
December	21, 1961	- 6 hours
January	3, 1962	- 6 hours

EMPLOYEES' STATEMENT OF FACTS: Due to the accumulation of clerical work of matching up weight certificates from various elevators, applying unloading weights to the waybill, bulk grain report on AT&SF Railway Company movements and making daily grain unloading reports on movements of grain and cotton, Carrier arbitrarily required E. O. Fertsch and C. R. Montgomery to suspend work as Claim Investigator-Delivery Clerks to perform work assigned to position of Cotton Clerk No. 119.

As was incontrovertibly shown in the denial of this claim on the property:

1. Even if Claimants Fertsch and Montgomery performed the specific chores outlined by Mr. Ligon in his letter of appeal dated April 14 (Exhibit D), clearly, in doing so, they were simply assisting the cotton clerks, none of whom was laying off, due to a temporary increase in the volume of their work. Job 117's starting was 8 A. M., just as was Job 119's, and both had the same quitting time — 5 P. M., as well as the same off days, Saturday and Sunday. The Chief Cotton Clerk and his other cotton clerks likewise had 8 A. M.-5 P. M. assignments. There thus could have been no matter of the temporary replacement by the occupant of Job 117 of the occupant of either of the assignments of cotton clerks. Paragraph (c), not paragraph (a), of Rule 50, therefore, governed.

And it is inconceivable that this paragraph (c) of Rule 50 would have been included in the contract, if use thereof could be deemed violative, or leading to a violation, of Rule 44. Its wording implies that the "higher rated employe" who is to be assisted temporarily has something more than his normal day's work to perform.

While Carrier recognizes that Rule 44 has been stretched far beyond any reasonable interpretation of its clear wording, it cannot believe that it should be further expanded to the extent of nullifying Rule 50(c).

2. Nowhere in the filing or appealing has any substantiation whatsoever been offered with respect to the amount of time Claimants Fertsch and Montgomery assisted or replaced Claimant Geary, or in any capacity whatsoever performed duties which entitled him to contend that their performance constituted an absorption that deprived him of overtime. Certainly the burden is on Claimants both to support their contention that forty-six hours were so devoted and to establish that Claimant Geary was the man who was wronged — Mr. Ligon's letter of April 14 (Exhibit D) would seem to indicate that the individual given the "temporary position" might be the one entitled to register complaint by reason of failure to establish such "temporary position" earlier. If there is any basis for the contention that forty-six hours had to be devoted to the work, it would seem that a "temporary position" for a week might have been justified, although, again based on the unproven figures given in filing and appealing the claim, apparently the Cotton and Claim Department was over-staffed.

3. Finally, as pointed out in the last paragraph of Exhibit E, even were the violation exactly as contended by the Employees, "only straight time, not 'time and one-half,' would be applicable to Mr. Geary's portion," under the consistent awards of all divisions of the NRAB.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends the Carrier violated Agreement Rules 44, 50 (a) and other rules by suspending Claimants Fertsch and Montgomery from their regular assignments as Claim Investigator-Delivery

Clerk, Position No. 117, in order to perform the duties of Cotton Clerk, Position No. 119. Cotton Clerk and Claim Investigator-Delivery Clerk are Group 1 clerical positions covered by the Agreement. The rate for Cotton Clerk is 72¢ per day higher than the rate for Claim Investigator-Delivery Clerk. Employees holding these two job titles work in the same department (designated as Cotton and Claim Department) at Carrier's Crawford Street freight station in Houston, Texas.

The Petitioner contends that on the dates indicated in the claim for Fertsch and Montgomery respectively, and for the number of hours listed elsewhere in the claim for such dates, these employees were assigned to prepare grain waybills for the Billing Department so that said department could make the expense bills in order that the waybills could be taken into accounts and freight charges collected. It is asserted that this is the regular work of Cotton Clerks and that the two Claimants were assigned to do this work during their regular hours, without increase in pay to the higher Cotton Clerk rate, because of the accumulation of clerical work accruing to Cotton Clerks.

The Carrier contends it is entirely reasonable for an employee in this department, finding the time to do so, to render assistance to another employee who temporarily finds himself engulfed by a deluge of work, whether or not a rate differential is involved. Management asserts such action is specifically provided for in Rule 50 (c), which is quoted in the parties' ex parte submissions. The Carrier neither affirms nor denies that such might have been the case on one or more of the days listed in the claim with respect to the conditions of the claimants' normal duties, with the result that the occupant of Position No. 117 lent a hand to Cotton Clerk Geary, who was one of the employees filling Position No. 119. But it is asserted that the fact that a Claim Investigator-Delivery Clerk performs some of the duties ordinarily performed by a Cotton Clerk does not constitute violation of the Agreement. Carrier further asserts that no substantiation has been presented with respect to the amount of time Claimants Fertsch and Montgomery assisted or replaced Cotton Clerk Geary. But in any event, contends the Carrier, there was no violation of Rule 44 (Absorption of Overtime).

We must agree with the Carrier that the Petitioner has failed to offer proof of the amount of work regularly assigned to Cotton Clerks which Claimants Fertsch and Montgomery assertedly performed. The Board cannot accept assertions as fact. Furthermore, the state of the record does not permit the conclusion that either of these claimants was suspended from work during regular hours in order to absorb overtime, in violation of Rule 44. At best, the record enables us to conclude that on one or more occasions the subject Claim Investigator-Delivery Clerks properly gave assistance to a Cotton Clerk on other Group 1 clerical work under circumstances clearly contemplated by Rule 50 (c).

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 6th day of August 1965.