Award No. 14150
Docket No. CL-14117

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

LOS ANGELES UNION PASSENGER TERMINAL
(Southern Pacific Company - Pacific Lines)
(The Atchison, Topeka and Santa Fe Railway Company)
(The Union Pacific Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5318) that:

(a) The Los Angeles Union Passenger Terminal violated the Clerks' Agreement on June 24, 1961, when it required Mr. R. B. Rawson, Relief Clerk, to leave his assignment for the purpose of performing work not included in the assignment of the employe whom he was relieving; and

(b) The Los Angeles Union Passenger Terminal shall now be required to allow Mr. R. B. Rawson four hours' additional compensation at the time and one-half rate of Checker; and to allow Mr. James W. Olson eight hours' additional compensation at pro rata rate of Checker.

EMPLOYES' STATEMENT OF FACTS: The Los Angeles Union Passenger Terminal is located in the City of Los Angeles, California, and its operation consists of handling passenger trains of the Southern Pacific Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company.

There is in evidence an Agreement bearing effective date January 1, 1959 (hereinafter referred to as the Agreement), between the Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal), and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. At the time this dispute arose, Mr. R. B. Rawson, hereinafter referred to as Claimant No. 1, was the regularly assigned incumbent of Relief Clerk Various No. 10, with the following work schedule:

The handling accorded the Claimant at the Terminal which gives rise to this claim conformed precisely to the Division's holding in its Award 5331 denying claim brought to the Division by Petitioner. In that case, as in the instant one, Petitioner relied partially upon the "Absorbing Overtime" rule to support its position. The following is quoted from that Opinion:

> "Except insofar as it has restricted itself by the Collective Bargaining Agreement, or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy."

The Terminal was not restricted by the agreement applicable to the employes here making claim, nor was it restricted by law in handling forming basis of this claim.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6019, 6562, 6750, 6873, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

The Terminal submits it has clearly shown herein that Claimant Rawson in this case was properly and regularly assigned the additional clerical work of lower rate classification for which he was paid at rate of position occupied on a regular Saturday basis on date of claim to fill out his assignment and that no one from the unassigned list in the lower rate classification was adversely affected in any manner as a result of such handling.

CONCLUSION

The claim in this Docket is entirely lacking in either merit or agreement support, and the Terminal requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Rawson was a regularly assigned Relief Clerk. On Saturday, June 24, 1961, he relieved Steno-Clerk Position No. 422. In addition to performing the duties of that position, Rawson was required to assist in checking baggage.

The Employes assert that the checking of baggage was never a part of the duties of Steno-Clerk Position No. 422, and, therefore, to require Claimant, as the relief man of that position, to perform that work was a violation of Rule 9(e), reading, in pertinent part, as follows:

> "Assignments for regular relief positions may on different days include different starting times, duties and work locations for employes of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving."

The best available evidence that the work of checking baggage was not one of the duties of the Steno-Clerk position is contained in the following

excerpt from a letter from the Carrier's Terminal Superintendent during the progression of the claim on the property:

> "As stated to you in conference, Lawrence C. Donald, **the regular occupant of Steno-Typist Position No. 422, acts in the capacity of Mr. H. E. Pierson's secretary Monday through Friday of each week, and as such, is required to remain in Mr. Pierson's office** for the purpose of taking dictation, performing other duties and answering telephones and taking messages for Mr. Pierson during the latter's absence from the office. **For this reason he is not utilized to assist in delivering and/or checking baggage.** Inasmuch, however, as Mr. Pierson's rest days are Saturday and Sunday, **it is not necessary that this same procedure be followed by the employe relieving Position No. 422** on Saturday." (Emphasis ours.)

Accordingly, the Board finds under the facts and evidence of record here that Rule 9(e) was violated. Claim of Mr. Rawson will, therefore, be sustained, but for payment of four hours at the pro rata rate, because no overtime was involved and no absorption of overtime occurred.

The claim of Mr. Olson is denied for the reason that there is no proof in this record that had Mr. Rawson not been used as a checker, the Carrier would have been compelled to call and use an extra man.

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.

AWARD

1. Claim of R. B. Rawson sustained for four hours' additional compensation at the pro rata checker rate.

2. Claim of James W. Olson denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.