

Award No. 14999
Docket No. CL-15588

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5730) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Roseville, California, when on July 24, 1961, it failed to call Mr. T. J. Miller to perform service on Train Clerk Position No. 37, but, instead, got the work of the position done by an on-duty employee; and,

(b) The Southern Pacific Company shall now be required to allow Mr. T. J. Miller eight hours' additional compensation at the time and one-half rate of Train Clerk for July 24, 1961.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees), which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time of this dispute, Mr. T. J. Miller, hereinafter referred to as the Claimant, was assigned to Train Clerk Position No. 51 at Roseville, California with a seniority date of February 12, 1945 on Seniority Roster No. 2.

On July 24, 1961, the position of Train Clerk No. 56, Hump Tower, assigned hours 11:00 P.M. to 7:00 A.M., was vacant account regularly assigned incumbent reported off duty.

The incumbent of Position No. 47, Hump Tower, assigned hours 3:00 P.M. to 11:00 P.M., was instructed to stay on duty and to protect Position No. 56, and as instructed, worked Position No. 56 until approximately 12:00 Midnight, and then requested sick relief.

The Assistant Chief Clerk was unable to contact any employee on the extra list or any off-duty regularly assigned employee qualified to work the position involved.

Claimant Miller, who was on his second assigned rest day, was not called for this vacancy inasmuch as he had previously made written request not to be called for any overtime service on so-called "Hump Tower" positions. Train Clerk No. 56 is one of these positions.

M. E. Rogers, who was senior to the claimant, completed his regular shift on Train Clerk Position No. 47 at 11:00 P.M., July 24, 1961, and was instructed to remain on duty to protect vacancy on Position No. 56; however, Mr. Rogers himself became ill and went off duty at Midnight. As there were still no qualified extra or off-duty regularly assigned employees available to fill Position 56, that position remained vacant for the balance of the shift and at approximately 12:30 A.M., July 25th, the work thereof was reassigned to be performed by an on-duty employee, Clerk E. O. Stover, who had commenced service at 11:00 P.M., July 24th, on Relief Position 19 relieving Train Clerk Position No. 37.

5. By letter dated October 11, 1961 (Carrier's Exhibit A), Petitioner's Division Chairman appealed to Carrier's Division Superintendent claim on behalf of Train Clerk T. J. Miller for eight hours at time and one-half rate of pay for July 24, 1961, account not called to work Train Clerk Position No. 37 when that position became vacant at approximately 12:30 A.M. during shift which commenced at 11:00 P.M. that date.

By letter dated November 27, 1961 (Carrier's Exhibit B), Division Superintendent denied the claim.

By letter dated January 24, 1962 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, who by his letter of July 29, 1963 (Carrier's Exhibit D), denied it.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, through the Organization, alleges that Carrier violated the Agreement when it failed to call him to perform service on Train Clerk Position No. 37 and, instead, assigned the work to an on-duty employee.

At the time of the dispute, Claimant was assigned to Train Clerk Position No. 51 at Roseville, California. On that day Position No. 56 became vacant because the regularly assigned incumbent reported off duty. In order to protect that position, the incumbent of Position No. 47, Hump Tower, was instructed to stay on duty. That position was worked by the incumbent of Position No. 47 until approximately Midnight, and then requested sick leave.

According to Claimant, at approximately 12:30 A.M., Carrier removed Mr. E. O. Stover from his assignment on Position No. 37 to complete the remaining portion of the Position No. 56 shift, thus leaving Position No. 37 vacant.

According to Carrier, Position No. 56 remained vacant for the balance of the shift (blanked) and at approximately 12:30 A.M. "the work thereof was reassigned to be performed by an on-duty employee."

There is some inconsistency by the Carrier in the Record as to which position was worked and which position was blanked. Carrier, however, contends that this is immaterial because all of the work involved was within

the rate and job classification of Train Clerk, and no provision of the Agreement prohibited Carrier from rearranging Train Clerk work to be performed by on-duty employees in that classification, which, as Carrier contends, could be intermingled or interchanged.

The primary inquiry in this dispute is whether Award 13186, decided on this property between the same parties, is controlling.

In that Award, this Board held:

"We have examined the record and are unable to find any evidence to support Claimant's contention. There is no evidence to show that the duties involved in Positions No. 48 and No. 53 were different or that the work could not be intermingled or interchanged. It should be noted that Claimant is assigned to relieve one position on one day and the other on the next. Further, there is not even any evidence to support Claimant's assertion that he performed the work of Position No. 48 on the day in question instead of the work normally involved on Position No. 53, if there is any difference. In view of the record, we are certainly unwilling to award a train clerk two days' pay for one day's work at a train clerk's position. We think this case is clearly distinguishable from Award 5306 where the evidence clearly pointed out the difference in duties at specifically identifiable positions. Here, there is no evidence to support Claimant's contention that the duties of two positions within the train clerk classification were as divided and detailed as in that case."

Notwithstanding assertions by Claimant that the positions were not interchangeable, we find no probative evidence in the Record to support these assertions.

The fact that one position worked the Hump Tower and the other at Yard Office three-fourths of a mile away does not distinguish this dispute from Award 13186.

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

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.

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