

Award No. 15475
Docket No. CL-15374

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, 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-5684) that:

(a) Carrier violated the Agreement between parties at Watsonville Junction, California, effective February 4, 1961, when it attached duties of Rate and Revising Clerk to Position No. 15, Ticket Clerk, and require the incumbent thereof, Mr. H. E. Mower, to perform such work at Ticket Clerk's rate of pay; and,

(b) Carrier shall now be required to allow Mr. H. E. Mower the difference between rates of Ticket Clerk and Rate and Revising Clerk, February 4, 5, 11, 12, 18, 19, 22, 25, 26, March 4 and 5, 1961, and each date thereafter that he is required to perform duties of Rate and Revising Clerk while assigned to and compensated at the rate of Position No. 15, Ticket Clerk.

EMPLOYES' 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 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. (a) This claim was instituted as the result of Carrier's decision to relocate the entire Agent's billing forces, known as "Central Billing," from the Watsonville Junction Yard Office to the Watsonville Junction Depot.

(b) Concurrent therewith, their decision included among others a change in the rest days of Position No. 25, Rate and Revising Clerk, from Sunday and Monday to Saturday and Sunday and the abolishment and/or cancellation of Relief Position No. 5. Prior to the relocation of this office, Position 24, Chief Clerk, rest days Saturday and Sunday and Position 25, Rate and Revising Clerk, referred to above, were six and seven days assignments and were

Position No.	Title	Daily Rate of Pay
14	First Ticket Clerk	\$20.10
15	Ticket Clerk	19.87
22	Rate and Revising Clerk	20.34
24	Chief Clerk	21.18

Rate of pay in 1961 for seasonal positions of Waybill Clerk established at Watsonville Junction was \$19.68 a day.

4. By letter dated April 6, 1961 (Carrier's Exhibit A), Petitioner's Division Chairman submitted claim to Carrier's Division Superintendent on behalf of the claimant for "... difference in rate between his position and that of Rate and Revising Clerk for February 4, 5, 11, 12, 18, 19, 22, 25, 26, March 4 and 5, 1961 and each subsequent date thereafter that a like violation occurs."

By letter dated May 31, 1961 (Carrier's Exhibit B), Division Superintendent denied the claim advising Division Chairman in effect that duties performed by claimant on dates in question were not duties of a Rate and Revising Clerk, rather consisted of work normally performed by the lower rated position of Waybill Clerk.

5. By letter dated July 12, 1961 (Carrier's Exhibit C), Petitioner's General Chairman appealed claim of claimant Mower to Carrier's Assistant Manager of Personnel. By letter dated March 14, 1962 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends in the instant claim that the Carrier violated Rule 7, which is as follows:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

The Carrier consolidated several billing stations into one which presently is known as "general billing." Prior to the relocation, there were three billing positions, two rate and revising clerks, a chief clerk and one relief position. After the relocation, the force consisted of two billers, two rate and revising positions, and a chief clerk. One billing position and the relief position were abolished. The resulting re-scheduling of rest days had the effect of reducing all positions in central billing to five day assignments without relief on Saturdays or Sundays.

During the period between February 4 and April 29, 1961, it appears, from the record, that the Claimant performed additional responsibilities and duties which included the handling and processing to completion of cars billed.

The Carrier restored the former relief position about May 1, 1961, which re-established the positions of chief clerk and rate and revising clerk to seven day assignments with relief on rest days. Apparently, this satisfied the complaint which the employees had lodged in this case.

We are of the opinion that the record supports the contention of the Claimant and, therefore, the claim will be sustained for the period of the violation referred to herein.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15475, DOCKET CL-15374 (Referee Hamilton)

This case turns on a simple question of fact, namely, on the dates involved did Claimant fulfill the duties and responsibilities of the higher rated position, Rate and Revising Clerk. If he did not, he has no basis whatever for the claim.

In recent Award 14991 (Hall), involving the same parties and a similar claim, we correctly ruled:

"In a determination of the issues there are two questions that we must direct our attention to. The first one is: 'Did Claimant fulfill, temporarily, the duties and responsibilities of a higher rated position?' Secondly: 'If so, what was the extent of time occupied by Claimant in the performance of the higher rated position?'"

Petitioner has the laboring oar in replying to both of these inquiries . . ."

In the instant case the Employees not only failed to prove that Claimant fulfilled the duties and responsibilities of the Rate and Revising Clerk, but they conceded the duties performed by Claimant are generally assigned to the lower rated position of Bill Clerk.

The only finding made in the Award with reference to the specific work performed by Claimant reads:

"During the period between February 4 and April 29, 1961, it appears, from the record, that the Claimant performed additional responsibilities and duties which included the handling and processing to completion of cars billed." (Emphasis ours.)

In handling this claim, the Carrier made the following assertions, both of which were undenied by the Employees, and therefore, must be accepted by us as true:

". . . Generally this work is performed by Waybill Clerks except at larger locations where service requirements necessitate splitting rating duties from waybill preparation duties in order to more efficiently handle billing in large volume . . . Where the volume and ease of billing does not necessitate such a division of duties, the rating and waybill preparation is performed entirely by waybill clerks."

The record shows that the rate of pay allowed Claimant was higher than that of a Bill Clerk, the rate normally allowed for the type of work which the Award finds was performed by Claimant. In our recent Award 14218 (Stark) we made this pertinent finding which should have been applied here:

". . . In any event, there is no persuasive evidence that work connected with these forms represented the basis for the Assistant Cashier-Teller rate differential, after consolidation. Moreover, as already noted, such work has been previously performed by an employe in a lower-rated position at Brooklyn (and elsewhere, as well, according to Carrier)." (Emphasis ours.)

There is no evidence in the record tending to prove that Claimant in fact fulfilled the duties and responsibilities of a Rate and Revising Clerk. We believe the Referee's conclusion to the contrary is arbitrary and invalid.

The provisions in the law making Awards of this Board final and binding do not empower the Board to validly make a finding or an Award that is not supported by any relevant evidence. Both the Federal Courts and the Congress have noted that Awards which have no foundation in reason or fact are invalid and should not be enforced by the Courts. *Barnett v. Pennsylvania-Reading Seashore Lines*, 145 F. Supp. 731, affirmed 245 F. 2d 579. *Gunther v. San Diego & Ariz. E. Ry.*, 382 U. S. 257 (1965). Report No. 1201 of Committee on Labor and Public Welfare, U. S. Senate, dated June 2, 1966, in connection with bill (H. R. 706) to amend the Railway Labor Act.

We dissent.

G. L. Naylor
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