



Award No. 16062
Docket No. CL-15421

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, 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-5698) that:

(a) The Southern Pacific Company violated the Agreement between the parties at Oakland, California, when it failed and refused to compensate Mr. James F. Lynch, incumbent of Rate Clerk Position No. 064, at the rate of Senior Rate Clerk Position No. 060, which position he was required to fill during vacation absence of the regular incumbent; and,

(b) The Southern Pacific Company shall now be required to allow Mr. James F. Lynch the rate of pay difference between Positions Nos. 064 and 060 each date March 26, 27, 28, 29, 30, April 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1962.

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.

When this dispute arose Mr. James F. Lynch, hereinafter referred to as the Claimant, was the regular assigned occupant of Rate Clerk Position No. 064, rate of pay \$21.51 per day.

Mr. A. J. Coats, incumbent of Senior Rate Clerk Position No. 060, rate of pay \$22.93 per day, took his vacation during the period March 26, 1962 through April 13, 1962. Chief Clerk Lewis instructed Claimant to leave his position to fill the vacancy. Claimant did so; however, he was not compensated at the rate thereof.

in recognition of experience and familiarity with the work and incumbents of those positions are expected to and do give rate clerks working with them assistance to the extent of answering questions which may arise regarding procedures to be followed in accomplishing the work being done. Supervision of the force in the Bureau and responsibility for the functions thereof rests with the Chief Clerk.

The Senior Rate Clerk assigned to Position 060, rate \$22.93 per day, was absent on vacation during the period March 26, 27, 28, 29, 30, April 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1962, and since at that time it was apparent that the volume of work being processed by the Revising Bureau was such that it could be readily handled by the remaining force, it was decided no vacation relief worker was needed for Position 060 and none was furnished.

By letter dated April 30, 1962 (Carrier's Exhibit A), Petitioner's Division Chairman submitted claim to Carrier's Auditor of Revenue Accounts in behalf of claimant, for difference in rate of pay between his Position 064 and that of Position 060, each date, March 26, 27, 28, 29, 30, April 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1962, based on the allegation that claimant was required to assume and perform the duties of Senior Rate Clerk Position 060 during the time the incumbent of that position was on vacation. Carrier's Auditor of Revenue Accounts advised Petitioner's Division Chairman by letter dated May 4, 1962 (Carrier's Exhibit B) that disputed work was work regularly required of position of rate clerk and the claim was therefore without basis and was denied.

By letter dated May 8, 1962 (Carrier's Exhibit C), Petitioner's Division Chairman appealed that claim to the Assistant General Auditor, who in turn denied the within claim by letter dated May 22, 1962 (Carrier's Exhibit D).

On June 18, 1962 (Carrier's Exhibit E), Petitioner's General Chairman appealed that claim to Carrier's Assistant Manager of Personnel and copy of the latter's letter of November 21, 1963, denying the claim is attached as Carrier's Exhibit F.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employees contend that the Claimant, the occupant of Rate Clerk Position No. 064 was assigned to perform and did perform the duties and responsibilities of Senior Rate Clerk Position No. 060 when the occupant of that position was on vacation. As support for their claim, the Employees cite Rule 7 of the Agreement:

"RULE 7.
PRESERVATION OF RATES

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 position during 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."

As well as Rule 10(a) of the Vacation Agreement:

"10(a) An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater. . . ."

The Carrier contends that the Claimant was not designated to fill the vacationing employee's position and that, during the period in question, he only performed the duties of his own position. The Carrier further contends that the claimant and the vacationing senior rate clerk were both members of a 6-men rate clerk work force, all of whom performed essentially the same duties, and that the absorption of the vacationing senior rate clerk's duties by the remaining 5 rate clerks was so readily handled that there was no necessity for the filling of the position of the vacationing senior rate clerk.

Upon consideration of all the evidence, the Board finds that the Employees have not sustained their burden of proving that the Claimant performed the duties and responsibilities of the vacationing senior rate clerk's position. The claim must be denied.

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 17th day of January 1968.

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