



Award No. 16530
Docket No. CL-16446

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6010) that:

(a) *The Southern Pacific Company violated the Clerks' Agreement at its Sacramento General Stores when on April 22, 1963, and subsequent dates, it required Mr. Hennessy Gomes, Order Filler, to abandon regular assigned duties in order to perform duties attached to position of Shipping and Receiving Clerk; and,*

(b) *The Southern Pacific Company shall now be required to allow Mr. Hennessy Gomes eight hours' additional compensation at the rate of Shipping and Receiving Clerk April 22, 1963, and each date thereafter that he is required to perform duties attached to position of Shipping and Receiving Clerk while assigned to position of Order Filler and compensated at the rate thereof.*

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent 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. Hennessy Gomes, hereinafter referred to as the Claimant, was assigned to position of Order Filler at Carrier's Sacramento General Stores, Diesel Shop, hours 7:00 A. M. to 3:30 P. M., rest days Saturday and Sunday.

mento in behalf of claimant for additional compensation as Shipping and Receiving Clerk for April 22, 1963, and for **each and every** day subsequent thereto, based on the premise that claimant was required to suspend the duties of his assignment in order to perform duties of a higher rated position of Shipping and Receiving Clerk. By letter dated July 16, 1963 (Carrier's Exhibit C), Carrier's General Storekeeper denied the claim. By letter dated July 22, 1963 (Carrier's Exhibit D), the Division Chairman requested that a conference be held, which conference was arranged by the General Storekeeper's letter dated July 23, 1963 (Carrier's Exhibit E).

After several agreed upon changes in conference dates, by letter dated October 3, 1963 (Carrier's Exhibit F), Carrier's General Storekeeper denied the claim. By letter dated October 22, 1963 (Carrier's Exhibit G), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated November 1, 1963 (Carrier's Exhibit H), Petitioner's General Chairman appealed the claim to Carrier's Supervisor of Stores and by letter dated February 27, 1964 (Carrier's Exhibit I), the latter denied the claim.

By letter dated March 20, 1964 (Carrier's Exhibit J), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated March 18, 1965 (Carrier's Exhibit K), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: In a previous case between the same parties, in which it was charged that another Order-Filler in the Sacramento General Stores was also doing the work of Shipping and Receiving Clerk, violation of Rule 7 was alleged; Rule 7 deals with assignment to higher-rated and lower-rated positions. Award No. 14991 disposed of that issue by holding that the evidence was inconclusive and that Claimant had not sustained its burden of proof. The Referee commented:

"It would appear that what Petitioner is really urging is the uprating of the Order Filler's job; consequently, whether or not the job should be uprated is one for negotiation on the property."

Here, a violation of Rule 22 is alleged. Rule 22 provides that "employees shall not be required to suspend work . . . to absorb overtime." This Rule is not applicable simply because an employe may be performing some work of another position. (The actual amount of such alleged work is not shown.) Claimant continued to work as an Order-Filler and was not removed from that position. There is no evidence that anyone lost overtime work. Thus whether or not certain of the duties properly fall within the higher classification, their assignment to Claimant did not constitute a suspension of the work of his regular position to absorb overtime.

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 1st day of August 1968.