



Award No. 17064
Docket No. CL-17621

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6415) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it required Mr. C. H. Heflin, Chief Clerk to the Atlanta Freight Agent, to suspend work on his own assigned position and prepare payrolls of yard office employees, work which is assigned by bulletin to Mr. G. H. Arrington, Chief Clerk to Superintendent of Terminals.

(b) Mr. G. H. Arrington shall be compensated at the rate of time and one-half, one day's pay for each date, October 18, 19, 20, November 1, 2, 3, 17 and 18, 1965.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimant in this case holds position and the Southern Railway Company.

Mr. G. H. Arrington is carried on the Southern Railway System - Eastern Lines - Atlanta Division, Seniority Roster - Group 1 Clerks, with a seniority date of April 1, 1943. He at the time of this claim had been an employee of the Southern Railway Company for approximately 22 years.

Mr. Arrington holds the position of Chief Clerk to Superintendent of Terminals, Inman Yard, Atlanta, Georgia. Part of his assigned preponderating duties are to "Must make payrolls and the necessary statements pertaining thereto." He prepared the payrolls for yard employees for a number of years, and on many occasions worked his rest days to do so.

On June 25, 1965, the Atlanta Freight Agency employees were moved with their work from the downtown Spring Street location to Inman Yards.

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.

* * * * *

OPINION OF BOARD: The issue herein is whether or not Carrier violated the Agreement when it permitted Freight Agency Chief Clerk Heflin to make the payroll of yard office employees.

The petitioner claims that the work of preparing the payroll of yard office employees is work that is assigned by bulletin to Claimant; that Chief Clerk Heflin was used by Carrier to perform this work in violation of Rule 30 of the Agreement for the sole purpose of depriving Claimant of overtime work; that there was not a consolidation of the freight agency employees and the yard employees even though said employees work in the same building; that no notice of a desire to consolidate was given by Carrier as required by Rule 14 and Memorandum of Understanding of July 25, 1957.

The Carrier's position is that bulletining of preponderating duties of a position does not require that all the duties thereof be listed in the bulletin; that the Carrier has the prerogative of utilizing employees to perform work other than that specifically listed in the vacancy bulletins; that Claimant does not have the exclusive right to said work because one of Claimant's bulletined preponderating duties is to make payrolls and necessary statements pertaining thereto; that there was not a consolidation of office or departments as contemplated by Rule 14 or the Memorandum of Understanding of July 25, 1957; that by long standing past practice some of the lower rated work has been performed by a higher rated employee in the same seniority district under Rule 46(a) without penalty payment.

The Organization contends that the sole issue herein is whether or not Carrier violated Rule 30 of the Agreement, and alleges that Carrier did so when it assigned to an employee of one department, namely, freight agency department, work of another employee in another department, namely, the yard department.

Therefore, we must determine whether or not an employee was required to suspend work during his regular hours as prohibited by said Rule 30 of the Agreement.

First, in regard to Claimant's contention that the bulletining of Claimant's position reserves to him the exclusive right to prepare the payroll of yard office employees, this Board held in Award No. 13195 that a bulletin by its nature is informational, not contractual, and found of no force or effect the bulletin evidence offered to describe work giving rise to an exclusive contractual right. See also Award No. 16802.

This Board in Award No. 16611, involving a similar rule as here, defined the meaning of "to suspend work during regular hours" as the holding out of

service of an employe during his regular assigned hours to evade payment of the overtime rate penalties prescribed in the Forty Hour Week Agreement.

Also, in said Award No. 16611, this Board considered a rule (Rule 17) similar to Rule 46(a) urged by Carrier herein as authorizing Carrier to have some work of a lower rated position performed by a higher rated employe, and the Board held:

"... We construe the Rule as prescribing the rates of pay agreed upon by the parties upon the exercise by Carrier of a management prerogative recognized by the parties — the temporary assignment by Carrier of an employe to work on a position other than one to which he is regularly assigned."

Inasmuch as Claimant failed to introduce any evidence of losing overtime work, and not finding Carrier guilty of violating said Rule 30, or any other rule of the Agreement, we are compelled to deny the claim.

Further, there was not a consolidation of departments within the intent and meaning of Rule 14 and the Memorandum of Understanding of July 25, 1957, and therefore Carrier was not required to give any advance notice as set forth therein. At most, there was a temporary assignment by Carrier of the freight agency Chief Clerk to perform some of the duties of Chief Yard Clerk, both within the same seniority district.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 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 16th day of April 1969.