

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 21277
Docket Number CL-21182**

Frederick R. Blackwell, Referee

**(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company**

**STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7803, that:**

1. Carrier violated and continues to violate the Clerks' Rules Agreement which became effective March 1, 1973, and in particular Rule 31(c), beginning October 15, 1973, when it required General Clerk No. 056, James B. Cummings, to assist Switching Clerk No. 053 in the performance of duties assigned to the switching Clerk position, and failed and refuses to compensate Clerk Cummings accordingly. (Carrier's file 205-4852)

2. Carrier shall now be required to compensate Clerk James B. Cummings, for the difference in the rate of pay (\$1.36 per day), between that of General Clerk No. 056 and Switching Clerk No. 053, beginning Monday, October 15, 1973, and continuing each work day Monday through Friday, until the violation is corrected. Claim is to include any successor(s) to Clerk James B. Cummings and is to further include any overtime work performed and all subsequent wage increases.

OPINION OF BOARD: This claim is for the difference between the rate of the Claimant's position of General Clerk and the higher rated position of Switching Clerk. The basis of the claim is that when he performed the duty of tracing cars, the Claimant was assisting another employee in a higher rated position within the meaning of Rule 31 (a) which provides that:

"An employee assisting another employee on a position paying a higher rate will receive the higher rate for the full day."

The above text is clear and unambiguous and thus the claim hinges on whether the facts establish that the Claimant was covered by the test during the claim period.

The record reflects that the Claimant was given some of the duties to "work car tracers" on October 15, 1973. The Employees say that this duty was assigned to the Switching Clerk position and that the Claimant's performance of the duty constituted assisting the employee in that position. The Carrier says that it assigned some of the car tracing work to the Claimant's General Clerk position on October 15, 1973 and that on and after that date, the subject work was assigned to both the Switching Clerk position and the General Clerk

position. Consequently, says the Carrier, the **Claimant** was performing his own work when he performed the work of tracing cars on and after October 15, 1973.

The record shows that the duty to "work car tracers" is specifically listed in the bulletined duties of the Switching Clerk position, and that it is not listed in the bulletined duties of the Claimant's position of General Clerk. However, the **Employees** neither contend that these bulletins are the controlling evidence on the fact issue of whether the duty to "work car tracers" was assigned to the Claimant nor that the Carrier did not effectively assign such duty to the Claimant on October 15, 1973. Moreover, the record reflects that such duty was in fact orally assigned to the **Claimant** on October 15, and nothing in the record indicates that such an oral assignment was ineffective. In these circumstances, and on the whole record, there is no evidentiary basis for finding that the Claimant's work of tracing cars was in the nature of assisting another employe in a higher rated position. Indeed, the record establishes the contrary as the evidence satisfactorily reflects that the duty to "work car tracers" was validly assigned to the Claimant on October 15, 1973 and that, consequently, the performance of such duty by the **Claimant** on and after that date was done in the course of performing the assigned duties of his own position. Although the **Employees** suggest that the Carrier admitted the fact of the Claimant's assisting another employe by not denying same on the property, the record shows that the Carrier contended on the property that the subject work was assigned to the **Claimant** on October 15. Since this contention constituted a denial of the fact basis of the claim, no admission by the Carrier is apparent of record and the claim must be denied on the ground previously indicated. Final note is made of the Carrier's contention that the subject work was not higher rated work. Whether such work was or was not higher rated work has no materiality in the disposition of this dispute and this decision should not be taken as a ruling on that question.

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; end

The Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of ~~Third Division~~

ATTEST: A. W. Pauls
Executive Secretary

Dated At Chicago, Illinois, this 12th ~~day~~ of November 1976.

LABOR MEMBER'S DISSENT TO AWARD 21279 (DOCKET CL-21182)
(Referee Blackwell)

The award herein is in palpable error for many reasons and in view thereof it requires dissent. The first paragraph of the Opinion correctly sets forth the issue. After correctly and precisely setting out the issue, one would think the issue would then be decided. Instead, however, the award avoids the issue and sets out a litany of gratuitous statements of such profound findings as:

"The record shows that the duty to 'work car tracers' is specifically listed in the bulletined duties of the Switching Clerk position, and that it is not listed in the bulletined duties of the Claimant's position of General Clerk. However, the Employees neither contend that these bulletins are the controlling evidence on the fact issue of whether the duty to 'work car tracers' was assigned to the Claimant nor that the Carrier did not effectively assign such duty to the Claimant on October 15, 1973. Moreover, the record reflects that such duty was in fact orally assigned to the Claimant on October 15, and nothing in the record indicates that such an oral assignment was ineffective . . ."

The author of the award then goes on in an effort to justify his denial decision, which is indeed most absurd and ridiculous, as it is evident whether or not said duties were assigned by bulletin or orally, claimant did assist another employe on a position paying a higher rate and, therefore, under the quoted Rule 31(a), was entitled to receive the higher rate of pay for the full day.

In addition, the author concludes by stating:

"Although the Employees suggest that the Carrier admitted the fact of the Claimant's assisting another employe by not denying same on the property, the record shows that the Carrier contended on the property that the subject work was assigned to the Claimant on October 15 . . ."

Dissent to Award 21279

and then through ~~some~~ stretch of the imagination concludes because he was ~~assigned~~ the work, not by bulletin but orally, it was work of his position and he, therefore, was not ~~assisting~~ another ~~employe~~ on a position paying a ~~higher~~ rate which would have entitled ~~him~~ to the higher rate for the ~~full~~ day under the provisions of Rule 31(a). This, again, is most absurd and ridiculous, and how the Majority can so conclude is beyond one's ~~comprehension~~ and beyond belief to the extent ~~that~~ it is in palpable error and requires dissent which is hereby vigorously registered.

Labor Member

Donald Toppin