

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21929
Docket Number cL-21664

James F. **Scearce**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**

PARTIES TO DISPUTE: (

(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8160) that:

(a) The Pacific Fruit Express Company violated the current Clerks' Agreement when it failed to call **employee C. Dominguez** to vacancies on Clerk Inspector Position No. 38 January 8, 14, 28, 29 and 30, 1972 but, instead, required an on-duty Shift Foreman to perform the duties thereof in addition to those of his own assignment; and,

(b) The Pacific Fruit Express Company shall now be required to compensate Mr. **C. Dominguez** for eight (8) hours at the time and one-half rate of Clerk Inspector Position No. 38 each date January 8, 14, 28, 29 and 30, 1972.

OPINION OF BOARD: This dispute arose out of the Carrier's decision to blank the position of Clerk Inspector. Position **38**, on the dates in question, when the incumbent of that position-or his replacement (when the incumbent was on vacation) were off due to illness, and to perform certain inspection work by use of the Shift Foreman.

The Organization contends a violation of Rule 31 which reads, in pertinent part, as follows:

OVERTIME

"(a) Except as otherwise provided in these Rules, time worked in excess of eight hours, exclusive of the meal period on any day will be considered overtime and paid on the actual minute basis at rate of time and one-half.

(b) **Employees** will not be required to suspend work during assigned hours to absorb overtime.

"NOTE: Under the provisions of this rule, an **employee** may not be requested to suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an **employee** cross craft lines to assist another employee. It is the intention, however, that an **employee may** be used to assist another employee during his tour of duty in the same office or location where he works and in the same **seniority** district without penalty. An employee assisting another employee on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing rules which provide for payment of the highest rate for entire tour of duty will continue in effect. An **employee** assisting another employee **on** a position paying the same or lower rate will not have his rate reduced."
(Emphasis added)

It is the Organization's contention that the work by the Shift Foreman was not in keeping with the intent of Rule 31.

The Carrier contends no rule restricts its authority to blank positions where such positions are not needed; such a judgment was made in the duties in question, according to the Carrier. The Carrier also points to an agreement dated March 21, 1940, in asserting the right of the Foreman to perform inspection work:

"At the Los Angeles ice manufacturing plant there are three Class 3 positions (one on each shift) with title of Assistant Foreman, which pay a five cent differential per hour over that paid ice men, or **60¢** per hour.

The work of these positions will be changed to include some clerical and a small percentage of inspection work; **however**, this will vary from day to day, sometimes being less than four hours and other days being in excess of four hours."

It is one such position contemplated by the 1940 agreement that was occupied by the Foreman in this case. The number of inspections **for the dates in question were enumerated by Carrier and described as minimal** -- a contention not effectively refuted by the Organization.

Nothing has been adduced that denies to management the right to blank a position, specifically where a *sufficient* work force is considered present to perform the required duties; in addition, the agreement between the parties contemplates the Shift Foreman being required to perform certain inspection work. The inspection work referred to in the claim is considered properly within the Shift Foreman's jurisdiction.

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

The Agreement was not violated.

A W A R D

Claim is denied.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.