

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22818
Docket Number CL-22667

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(**Steamship** Clerks. **Freight** Handlers,
(Express and Station **Employees**
(Southern Pacific Transportation **Company**
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL8657)
that:

(1) Carrier violated the rules of the current Agreement between the parties when it required Mr. **H. J. Breaux**, Messenger **Caller** Position No. 110 at Avondale, Louisiana, to perform the duties of the higher rated position of Yard Clerk Position No. 30 on February 15, 16, 17, 18, 19, 23, 24, 25 and 26, 1977 and continues to require the work to be done and then refused to compensate him at the higher rate of Position No. 30 Yard Clerk, for the entire 8 hours of his **assignment** on each of those dates and each subsequent date.

(2) Carrier shall compensate the Claimant for the difference in the rate of pay between Messenger Caller Position No. 110, whose daily rate is \$46.7376 per day and that of Yard Clerk Position No. 30 whose daily rate of pay is \$49.6473 on each of the dates enumerated above, and shall continue to allow this difference in rate of pay on each date the Claimant and/or his successors are required to perform the work of the higher position.

OPINION OF BOARD: Claimant, who is the occupant of Messenger *Caller* Position No. 110 at Carrier's Avondale, Louisiana yard, was assigned the duty of **making** checks of cars on inbound trains. **Making** checks of cars on inbound trains is work assigned to and **regularly** performed by **employees** in Yard Clerk position No. 30, a position carrying a higher rate of pay than Position No. 110.

Carrier has acknowledged **that** Claimant performed the car checks **"and** consumed one hour or less in performing this *service*." The Brotherhood seeks payment at the higher rate for each day he performed the duties of the higher rated position. Carrier, while disputing payment on other grounds, would restrict any payment to the actual time worked, i.e. one hour or less on each date.

Carrier's position with respect to the time to be allowed is based on Rule 46, which reads:

"RULE 46

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."

Carrier did not take the position that Claimant was assisting a higher rated **employee** and therefore subject to the exception stated in the Rule. It argued that the words "occupying such positions" mean that payment at the higher rate is limited to the actual time **Claimant** performed the duties of the higher rated position, i.e. one hour or less per day.

Clearly those words could be read as Carrier reads them. **However**, they can as easily be read **to** mean that a temporary assignment is on a day to day basis. The Board has not been referred to a case which has interpreted this or similar language in the manner argued by Carrier. The parties' rate structure for the involved positions is on a per diem, not an hourly basis. Article 46 speaks to preservation of "Rates" and if the preservation were intended to be on a minute basis, rather than the daily basis negotiated for each position, reasonable clarity indicates that Rule 46 should have directly expressed that intention. For example **the** parties specified that overtime will be "paid on the actual minute basis..."

These considerations indicate that the ambiguity in **Rule 46** **must** be resolved by finding that a person who performs the duties of a higher rated position occupies that position for the purposes of **Rule 46** for the day on which the temporary assignment is made, notwithstanding the fact that the duties of the higher rated position were not performed for the entire day.

The claim was filed as a continuing claim and on the property the Brotherhood identified dates subsequent to the filing of the claim for which claim was made. Carrier's objection to those dates is not well founded.

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 violated.

A W A R D

Claim sustained.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.