

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement;

(1) When during the month of July, 1939, it assigned employees regularly occupants of clerical positions in the Kansas City (Western District General Superintendent's) District Office, to the performance of higher rated work and required such employees to assume the fulfillment of the duties and responsibilities of a higher rated position and failed and refused to compensate the employees so engaged upon the basis of the higher rate while performing such work, as follows:

(2)

Name	Regular Assigned Position	Rate	Date Assigned to Perform Work Rated at \$7.09 Per Day	Claim for Difference of
H. N. Baker	Asst. Accountant	\$6.79	July 19 & 20	2 days @ 30¢ .60
O. K. Pullian	Material Clerk	6.69	July 19, 20 & 21	3 days @ 40¢ 1.20
G. L. Quin	Asst. Accountant	6.29	July 19, 20 & 21	3 days @ 80¢ 2.40
G. A. Maxwell	Material Clerk	6.29	July 19, 20 & 21	3 days @ 80¢ 2.40
R. C. Cowdrey	Asst. Accountant	6.79	July 21 & 24	2 days @ 30¢ .60
F. L. Mueller	Asst. Accountant	6.29	July 25	1 day @ 80¢ .80
E. Shelton	Asst. Accountant	6.29	July 24, 25 & 26	3 days @ 80¢ 2.40
L. Brenner	Material Clerk	6.29	July 24	1 day @ 80¢ .80

Total claims for the dates specified..... \$11.20

(3) That each employe listed and others affected be compensated in the amount of wage loss suffered because of the violation of Agreement, retroactive to August 31, 1939, the date upon which the organization submitted complaint and claims to the General Superintendent."

EMPLOYEES' STATEMENT OF FACTS: "On or about May, 1931, the Missouri Pacific consolidated and moved the work of keeping time, compiling pay rolls, handling of accounting including distribution of labor and material, and other accounting work which work had theretofore been handled on the operating divisions in the offices of the Division Superintendents at Coffeyville, Kansas, Wichita, Kansas, Kansas City, Missouri (for

"This entire proposition now before your Honorable Board is a move on the part of our employes to disguise a request for increase in rates of pay on a rule violation.

"There is no rule violation, as the Board can readily see, from the facts heretofore stated in our presentation; the rates we are paying for clerical workers in the accounting division of the District Accountant's Office at Kansas City were established by mutual agreement with the Employes in 1932. The work assigned to the desk was well known to the Employes' representatives at that time, and there has been no change whatsoever in the assignment of work since the positions were established. Rule 66 cited by the Employes to support their claim in the presentation of this case to the Carrier in letter dated August 31, 1939, to General Superintendent Davis reads in part:

'Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions * * *'

None of the claimants in this instance were assigned temporarily or permanently to higher rated positions, the work assigned to their desk was no different in July, 1939, than what it was when the positions were established in January, 1932, nor has there been any change made since July, 1939.

"During the month of July, 1939, the chief clerk in charge of the District Accounting Office, designated by memorandum form to certain clerks in the accounting force the specific numbered A. F. E. that it was desired he render assistance to the accountant in compiling. The actual work performed by the individual clerks in July, 1939, was no different prior or subsequent thereto, but during this particular month there were certain numbered A. F. E.s that preference was to be given by the accounting force owing to their having been delayed in prior month's accounts, due to the accounting force working on certain classified A. F. E. accounts, such as in the immediate preceding months they devoted their time to accounting work in connection with branch line studies, and this resulted in an accumulation of A. F. E. reports. During the month of July certain of these A. F. E.s were to be given preference to enable the district office to submit their reports within the time limits specified by the General Accounting Office, namely, A. F. E. reports to be rendered within a period of sixty days from date of receipt.

"The method of handling A. F. E. statements in the District Accounting Office is absolutely no different than what prevailed when accounting offices were attached to each operating division some 18 in number; neither is it any different in any manner whatsoever than that now prevailing in the Little Rock District Accounting Office from whom no complaints have been made by the Clerks' Organization."

OPINION OF BOARD: Petitioner claims that in July, 1939, certain employes were temporarily assigned to a higher rated position and therefore were entitled to receive the higher rate of that position while occupying same. The carrier denies that these employes were assigned to a higher rated position, and makes an argument that they were assisting a higher rated employe due to a temporary increase in the volume of the work, and that they were not fulfilling the responsibilities of the position, and therefore were not entitled to the higher rate. Rule 66 of the agreement in evidence is cited by petitioner and the parties treat it as determinative of the question they have raised. Petitioner's contention depends on temporary assignments of claimant-employes having in fact been made. As to what is a "temporary assignment," Rule 66 says that the words "contemplate the fulfillment of the duties and responsibilities of the position while 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." It is also agreed in the rule that "assisting a higher rated employee, due to a temporary increase in the volume of the work, does not constitute a temporary assignment."

The employees named in (2) of claim held positions in carrier's Kansas City Accounting Office. The positions in this office were given a payroll classification for the purpose of identifying the major responsibilities that attached to each desk. A force of 17 men comprised the accounting division. The docket shows that the higher rated position mentioned in the claim was designated as A. F. E. Accounting work, and that the incumbent was charged with the responsibility of maintaining separately by divisions, in numerical order, A. F. E. Statements with Form 1537-B reports in readiness for handling by any of the accounting force; to know what projects under which charges should be completed, with preferred attention given to industrial A. F. E.s, F. E. R. A. projects, and those involving joint facility account; to maintain constant contact with the various statements, reporting direct to the Chief Accountant the progress of the work of handling A. F. E. Statements. A check developed that he expended about 45% of his working time on A. F. E. work, and the remainder on various other accounting work. There is also shown an ebb and flow of the work on A. F. E. Statements in the Kansas City Accounting office, dependent on the jobs being worked at any particular time on the railroad, the periods of the month when certain reports are compiled and due in the General Accounting office at St. Louis, and other contingencies.

In July, 1939, certain specific numbered A. F. E. reports were designated by memorandum to certain clerks, i. e., those named in (2) of claim, for handling by them to a conclusion. It appears from the record that at the time this was done there existed a temporary increase in the volume of the A. F. E. report work that made the carrier's action necessary if the work was to be done within the prescribed time. There is no showing that establishes that this temporary increase was purposeful or was something for which the carrier was at fault.

Applying the rule to the facts, it appears to the Board that the provisions of the rule compel saying that the showing made in this docket is insufficient to warrant a holding that temporary assignments were in fact made. Segments of the work of the higher rated position were distributed to various employees named in (2) of claim, but the co-ordinating and directional responsibilities inherent in the position, as described in the docket, were not theirs to fulfill. There is no showing that claimant-employees in any way assumed these responsibilities, nor from any showing in the docket can it be safely said that they would have been capable of fulfilling them without a preceding contact with the various factors as they had developed. The parties, in Rule 66, made fulfillment not only of the duties but of the responsibilities of the higher rated position one of the criteria to be used in ascertaining whether there has been a temporary assignment for the purpose of the rule. And as noted above, there was the temporary increase in the volume of the work, due to which fact the higher rated employee was in a situation where he required assistance in this work. The rule expressly eliminates from the category of assignments the assisting of a higher rated employee when it is due to temporary increase in the volume of the work. In other words, the parties recognized in Rule 66 that there are two distinct things: (1) Assignments to higher rated position and (2) Assisting higher rated employees. In the rule the parties defined certain distinctions between these things. We cannot hold there was a temporary assignment when the record is as it is in this docket without being disregarding of those distinctions the parties themselves established. In the fact that the reports to be handled by claimants were designated in this instance by memorandum given them, the Board discovers nothing sufficient in itself to indicate an intent on part of carrier to depart from the agreements in Rule 66. With respect to (3) of the claim, there

appears to be no showing of facts on which a decision of the question of violation could be rendered. In the opinion of the Board, the claim must be denied.

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 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 facts in this docket are insufficient to establish violation of the rules cited.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.