

Award No. 2013
Docket No. CL-1931

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When effective November 29, 1940, without conference, negotiation and agreement between the parties, it removed the work of taking Annual Store Inventory consisting of:

Work	Assigned to	Rate	Hours Worked
(a) Counting & Recording on inventory cards all material in flue shed	R. L. Harless Bmkr. Foreman	\$235.00 Mo.	1
(b) Counting & Recording on inventory cards all material in lbr. shed	W. E. Rankin Car Foreman	250.00 Mo.	6
(c) Counting & Recording on inventory cards all material in B. & B. yard	F. A. Edwards Shop Supt. W. E. Rankin Car Foreman	300.00 Mo. 250.00 Mo.	8 8
(d) Counting Material in Store Room	H. T. Pogue Whg. Air Brk. Foreman	215.20 Mo.	6 $\frac{3}{4}$
" " " "	H. H. Sevall Elect. Foreman	210.20 Mo.	6 $\frac{1}{2}$
" " " "	J. F. Talbot Motor Car Operator	145.00 Mo.	6
" " " "	G. R. Presley Asst. Electrician	.72 $\frac{1}{2}$ Hr.	6 $\frac{1}{4}$
" " " "	Ruel Palmer Mach. Helper	.58 Hr.	6 $\frac{1}{2}$
" " " "	L. F. Hoover Carman Helper	.58 Hr.	6
" " " "	Raymond Palmer S. S. Laborer	.42 Hr.	6 $\frac{1}{4}$
Posting inventory count on Acme cards	R. G. Powers Traveling Auditor	260.00 Mo.	5 $\frac{1}{4}$

Approximate Total. . 73 Hours

out from under the scope and operations of the Clerks' Agreement and assigned said duties and work to the above named employees who hold no rights under the Clerks' Agreement.

(2) The Carrier violated the Seniority Rules of their agreement when it assigned employees who hold seniority rights only in the Accounting and Treasurer Departments to perform the following work:

Work Date	Assigned to	Rate	Hours Worked
11-29-40	C. S. Gary—Clerk	\$7.95 day	8
Recording on inventory cards	Acct. Dept.		
count of material in store room	E. E. Ellison "	6.60 "	8
" " " "	E. R. Neely "	6.78 "	8
" " " "	C. H. Rook "	5.00 "	8
" " " "	Ivan Kendall "	7.25 "	8
" " " "	C. A. Montgomery	5.00 "	8
" 11-30-40 "			
	Total..		48 Hours

Posting inventory count on Acme cards

(Same Employees) (Same rates) 4½ each
Total.. 27 Hours

" " " "	C. W. Gary—Clerk	7.95 day	5½
" " " "	E. R. Neely "	6.78 "	5½
" " " "	C. H. Rook "	5.00 "	5½
	Total..		16 Hours

Total hours worked by employees not within seniority district or covered by agreement.....164 Hours

(3) The Carrier violated the rules of their agreement when it assigned higher rated work to employees and failed and refused to pay the higher rate to the following employees covered by their agreement:

Work Date	Assigned to	Rate	Hours Worked
11-26-40	J. L. Jackson	\$0.42 per hr.	4
Measure and mark rail and Bridge	Semi-skilled Laborer		
Timber in B. & B. Yard	J. C. Hancock	.42 " "	4
" " " "	Semi-skilled Laborer		
11-27-40			
Counting Mtl. in B. & B. Yard	H. A. Lewis	3.76 per day	6
	Store Helper	.71 hr. O.T.	1
11-29-40			
Taking inventory of casting plat-	A. Poole	3.76 per day	8
form and ironrack	Store Helper		
" " " "	H. A. Lewis	3.76 per day	6
" " " "	Store Helper		
	Total..		30 Hours

(4) That all employees shown on the Store and Mechanical Roster who were entitled to perform this inventory work be compensated as follows:

C. H. Pearson	27½ hours at time and one-half rate
R. L. Moore	27½ " " " " " " "
W. T. Patrick	27½ " " " " " " "
J. M. Bradshaw	27½ " " " " " " "
H. A. Lewis	27½ " " " " " " "
A. Poole	27½ " " " " " " "

(5) That the following employees be paid at the higher rate of the position:

H. A. Lewis	13 hours straight time
H. A. Lewis	1 hour at time and one-half
A. Poole	8 hours straight time
J. L. Jackson	4 " " "
J. O. Hancock	4 " " "
Raymond Palmer	6½ " " "

the Accounting Department to perform extra laborer's work at the Store Department. The employees in that claim are in error as to the coverage of the agreement, but the inconsistency of their position is apparent. In that claim they contend that employees holding seniority rights in the Accounting Department **must** be used in preference to outsiders for store work, while in the instant claim they complain because employees holding seniority rights in the Accounting Department **were** used. It will also be observed in the other case mentioned that there is no contention that the extra work in question should have been performed by the regularly assigned employees outside of their regular tour of duty.

In Award 660 of the Third Division, Docket CL-702, the Board denied the claim of one Edwards, regularly employed as janitor by the Salt Lake City Union Depot & Railroad Company, who claimed that he should have been used for extra work as a baggage helper instead of an employee from the D. & R. G. W. It had been the practice to use Edwards and another janitor, Thornwall, on extra baggage helper's work outside their regular assigned hours. The extra work complained of was performed during Edward's regular tour of duty. The Board ruled he should not receive additional compensation. In the case of Thornwall, the other janitor, the Board ruled he should receive extra compensation only for the extra work performed prior to his regular starting time. In the instant case all of the extra work complained of was performed during the regular tour of duty of the claimant employees of the Store Department, while they were at work on their regular positions.

There is no merit in the claims and contentions of the employees and they should be denied.

OPINION OF BOARD: Since 1923 the Carrier in this case has always maintained the practice of taking an annual inventory in one day, and during 18 of those years no complaint was made by the Clerks' Brotherhood. However, about two weeks prior to the taking of the 1940 inventory the General Chairman advised the Carrier that they considered the existing method of taking inventory to be in violation of the rules of the agreement and demanded that this work be given to the employees in the Store and Mechanical Department seniority roster. The clearest statement of the position of the employees is to be found in two letters, one from R. L. Moore, the Recording Secretary to Mr. J. W. Womble, Mechanical Superintendent, dated January 22, 1941, which contains the following statement:

"In reply to the third paragraph of your letter, as already explained to you, it is our contention that the employees in this seniority district are entitled to perform this work on overtime in preference to employees from other seniority districts, employees from other crafts, and officials or foremen."

A further and different statement of the claim is found in a letter from General Chairman C. A. Malone to T. H. Niles, Vice President, dated April 18, 1941, where it is stated:

"We contend that if the employees in the Mechanical and Stores Department could not take care of this work during their regular 8 hour assignment, then the Company should have permitted or called these employees to perform this work, at overtime rates, in preference to employees not covered by the agreement, and employees from other Seniority Districts."

The taking of an inventory in any business is properly assignable to the Auditing Department. An accurate inventory is an essential part of any system of auditing and accounting, and the Auditing and Accounting Department of this Carrier was properly in charge of that yearly one day operation. Some of the work is semi-skilled labor. Some of it may require a special knowledge or skill in connection with some items of materials. Some of it is

purely clerical, as writing down numbers, amounts, and figures. The taking of an annual inventory occupying one day of time is not a part of the routine daily work of the Railroad. Neither does any particular item of labor or service involved in that one day of work come within the true intent and meaning of seniority rules. A reading of these rules indicates that seniority is a permanent thing which an employe acquires and builds in order that he may step up to a better position or be deferred when forces are reduced. These rules provide for the posting of the names, for the protesting of erroneous seniority dates, for the bulletining of positions and vacancies and for the exercise of seniority rights when such new positions or vacancies occur. There is nothing in the rules to prevent the Carrier from using any or all of its employes in any capacity on the taking of an annual inventory, and it would be most unreasonable to construe them in such a manner as is here claimed.

To say that the six clerks named in the fourth paragraph of the claim had an absolute right to do this work on an overtime basis is entirely unjustified. Overtime pay is intended as a penalty against the Carrier to protect the employes from being worked an excessive number of hours without being paid the extra rate of time and one-half. It cannot be said that the employes have the right to insist upon work being deferred or established systems of Accounting upset in order that they may have the privilege of working overtime and getting overtime pay. These men, Pearson, Moore, Patrick, Bradshaw, Lewis, and Poole worked their regular hours and received their regular pay. That is all the agreement guarantees. If the system or method of taking inventory is to be taken away from the Carrier after nearly 20 years established usage and sound accounting practices, it must be done by a bilateral agreement and not by a unilateral effort to force the change.

These working agreements are made to promote harmony between management and labor and must not be interpreted in an unreasonable way. Reference to the claim above shows that men familiar with the materials being inventoried were used in counting, measuring, etc., and clerks were used for recording in most instances, and that the entire transaction was carried out in accordance with established usage within the time required by the Accounting Department. Taking an inventory is similar to taking an audit of a Ticket Agent's sales and cash. No one would contend that the Ticket Agent himself should be the only one to audit his own records, and these clerks should not contend that it is contrary to the rule or contrary to common sense for the Accounting Department to send in the proper men to take an inventory in the shortest possible length of time, and therefore with the lowest turnover of materials while the inventory is being taken. In connection with this inventory no new positions were created and there was nothing upon which any bulletin could have been posted, nor to which seniority rights could be applied. It is an attribute of management to determine when and how work is to be done, and to determine whether overtime should be necessary or extra employes temporarily needed. Nothing has happened in this case so far as the first four claims are concerned that has violated any rule of the agreement or any right of seniority.

As to the third and fifth claims that H. A. Lewis, A. Poole, J. L. Jackson, J. O. Hancock and Raymond Palmer be paid at the higher rate for the work which they were performing the matter is different. They are entitled to the extra pay which they claimed, and claims Nos. 3 and 5 should be allowed, under rule 39.

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 claims 1, 2 and 4 should be denied, claims 3 and 5 should be sustained.

AWARD

Claims 1, 2 and 4 denied, claims 3 and 5 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.