

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Utility Clerk, Houston Freight Station, should be paid at the rate of \$7.85 per day during the period June 2 to June 11 and June 13 to June 24, 1942.

EMPLOYEES' STATEMENT OF FACTS: There is a position in the Houston Freight Station designated as Chief Cotton Clerk and paid \$7.85 per day. One of his regular duties is the handling of Cotton Concentration Claims. This work, handling Cotton Concentration Claims, has never, heretofore, been performed by anyone except the Chief Cotton Clerk.

During the cotton season each year it has been the practice to increase the force in the Cotton Department, but, due to the importance of the work, no one except the Chief Cotton Clerk has ever been required or permitted to handle these concentration claims.

From June 2 to June 24, 1942, with the exception of June 12, the Utility Clerk, rate \$7.05 per day, was assigned the handling of the Cotton Concentration Claims.

Claim was filed on June 17, 1942 and the carrier discontinued the violation on June 24, but declines to make proper payment to the Utility Clerk during the time involved.

POSITION OF EMPLOYEES: Rule 50 of the current agreement in effect on this property reads as follows:

(a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced.

(b) A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the position or work during the time involved.

(c) Assisting a higher rated employee due to a temporary increase in the volume of work, does not constitute a temporary assignment.

The above rule was written into the agreement in order to insure that employees would be paid the higher rate when required to perform any work

- (b) A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the position or work during the time involved.
- (c) Assisting a higher rated employe, due to a temporary increase in the volume of work, does not constitute a temporary assignment.

As indicated in the Carrier's Statement of Facts, due to a sudden increase in work in that department of the Houston Freight Office, over which Chief Cotton Clerk has supervision, and he being the only employe assigned at the time and due to the importance of the quick handling of the work, it was necessary that he be given assistance and the Utility Clerk, who is used to assist employes in the various departments of the Houston freight office, was delegated to assist the Chief Cotton Clerk in the handling of the concentration claims referred to in the Carrier's Statement of Facts.

The Utility Clerk was not permanently assigned to assist the Chief Cotton Clerk and neither was he temporarily assigned to a higher rated position or work, inasmuch as he did not fulfill the position or work of the position of Chief Cotton Clerk during the time involved in the instant claim.

Paragraph (b) of Rule 50 quoted above defines a temporary assignment referred to in paragraph (a) of the same rule. The Utility Clerk worked under the supervision and direction of the Chief Cotton Clerk and did not assume the responsibility attached to that of Chief Cotton Clerk.

Paragraph (c) of Rule 50 definitely states that assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.

Utility Clerk was used to assist a higher rated employe due to a temporary increase in the volume of work and, therefore, his having assisted the Chief Cotton Clerk did not constitute a temporary assignment in the Department over which the Chief Cotton Clerk has supervision.

It is the contention of the Carrier that under Rule 50 quoted above, the Utility Clerk was properly paid during the time he assisted the Chief Cotton Clerk as indicated in the Carrier's Statement of Facts, and that he is not entitled to rate established for the Chief Cotton Clerk as claimed by the Organization.

Your Honorable Board is respectfully petitioned to deny the claim.

OPINION OF BOARD: From June 2 to June 24, 1942, with the exception of June 12, the Utility Clerk, rate \$7.05 per day was assigned to handle Cotton Concentration Claims, work theretofore done exclusively by the Chief Cotton Clerk, rate \$7.85 per day. While doing this work the Utility Clerk did not receive the higher rate of pay. The employes assert that this was in violation of Rule 50 of the Agreement.

The Carrier insists that the work here in question was "assisting a higher rated employe, due to a temporary increase in the volume of work" as described in 50 (c), and, therefore, constituted an exception to Rule 50 (a).

To come within the exception such work must meet the requirements specified: 1. It must be done in assisting a higher rated employe. 2. The assistance must be given due to a temporary increase in the volume of the work. If either of these elements is lacking, the exception is not applicable and the defense of the Carrier must fail.

Cotton Concentration Claims are filed by the shipper with the agent. The agent transmits the claim to the Western Weighing and Inspection Bureau at Houston for check of tonnage and verification as to how the cotton was shipped to Houston. After this is done, the claim is returned to the agent. The claim is then referred to the Rate Department for revision of rates. After this is done, the claim is referred to the Head Cotton Clerk, who prepares the claim and then returns the file to the agent for a voucher. This represents the ordinary manner of handling the Cotton Concentration Claims.

In May, 1942, some of the shippers complained that the agent at Houston was not handling these Concentration Claims promptly and requested settlement of all such claims prior to July 31st, the end of the fiscal year. As a result of this complaint and conferences between the officials of the Carrier, the Superintendent of Terminals at Houston authorized the agent to work his Rate Department overtime "for the purpose of handling Cotton Concentration Claims which had accumulated up to that time."

The Carrier states that 294 such claims were on hand to be handled during the month of June. We assume that this number included 70 which were filed in June. The record discloses the fact that during the twelve-month period beginning with August, 1941, and ending with July, 1942, there was an average of 68 claims per month filed. This means that for approximately three months the claims had been permitted to accumulate. The number of claims filed each month during said twelve-month period had been more or less uniform. The number of claims filed in some months had been less and in some months more than were filed in June. It is conceded that the amount of cotton shipped out by rail and the consequent number of Cotton Concentration Claims were greater than in previous years, but it is not seriously contended that this increase in amount of cotton shipped and number of claims filed during the year in question, and the preceding year, constituted "a temporary increase in the volume of work" which brought the work here in question within the exception.

Nor does the Carrier contend that the current claims filed in June, 1942, amounted to a temporary increase in the volume of work. In each of five of the next preceding eight months more such claims were filed than were filed in June. Instead the Carrier contends that the accumulated claims constituted a temporary increase in the volume of work. With this contention, we are unable to agree.

The interpretation contended for by the Carrier would nullify Rule 50 (a). Under that instruction, the Carrier could have less than an adequate force to do the higher rated work and then periodically assign the accumulated work to a lower rated employee. This could not have been intended by the exception stated in Rule 50 (c).

Since there was not a "temporary increase in the volume of the work," it is unnecessary to determine whether in doing this work the Utility Clerk was assisting the higher rated chief cotton clerk.

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 employee involved in this dispute are respectively carrier and employee 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 Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.