

Award Number 3106
Docket Number CL-3061

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When it failed and refused to properly compensate V. C. Lyons, Clerk, in the Joint Facility Accountant Office at St. Paul, Minnesota, for work performed on position known as J-11, on or about September 11, 1944.
2. That Clerk, V. C. Lyons shall be compensated at the rate of \$8.94 per day instead of \$7.61 per day which he was paid, or a difference of \$1.33 per day for each day required to perform the higher rated work, assigned to position J-11, retroactive to September 11, 1944.

EMPLOYEES' STATEMENT OF FACTS: In the Office of Joint Facility Accountant, there is a position known as J-11. The assigned work on this position is to make and write up bills against other railroad companies who use the Carrier's tracks between St. Paul and Minneapolis, Minnesota.

The position mentioned, known as J-11, handling these joint line bills pays a rate of pay that is higher than the Clerk position held by V. C. Lyons. Due to the increase in wages granted employees from February 1st, 1943 to December 1943 inclusive, it became necessary to bill all tenant companies for the proportion of said back pay which amounted to approximately \$92,000.

The Clerk assigned to position J-11 was unable to prepare the bills covering this backpay period within his regular assigned hours and, also, keep up to date the current bills assigned to this position so the Management assigned Clerk, V. C. Lyons to prepare bills against the various tenant companies. He performed this assignment by assuming the fulfillment of duties and responsibilities of the position on his own initiative and without noticeable help, assistance or supervision from the incumbent of the position involved in this claim.

POSITION OF EMPLOYEES: This dispute and claim arises from the application of the Agreement between the Carrier and the Organization regarding the proper assignment of clerical work, and to the preservation of established and agreed to rates of pay, which directly involves the application of the Agreement between the Carrier and the employees dated October 1, 1925 and the following Rules:

"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."

The Carrier does not feel that there should be the least necessity in this case of setting up any lengthy argument, the facts speak for themselves. Mr. Lyons sat with another employe and called back figures prepared by the other employes from a typed statement. Anyone who could read could have done the same and yet the claim is made, presumably, that he fulfilled the duties and responsibilities of a position receiving a rate of \$8.94 per day, the duties of the occupant of which were to prepare, based on his own knowledge of contracts with tenant companies, all of the elements of expense properly included in bills under such contracts and the proportion assessable against each tenant, two sample sheets of such a bill constituting Carrier's Exhibit C-1. These sheets were taken from the August bill against the Chicago Great Western Railway Company covering the use of so-called short line tracks between St. Paul and Minneapolis, and the entire itemized bill prepared by the occupant of position J-11 constituted 117 such sheets, and yet Mr. Lyons, who called back from a typed statement to another employe figures which he had no part in setting up, is claiming that he fulfilled the duties and responsibilities of position J-11.

The Carrier cannot help but feel that the employes themselves, even the claimant herein, must realize the absurdity of this claim, and are only carrying same to your Board with a vague hope that they might obtain a favorable award and thereby establish a precedent that if an office boy were called to read back the typed figures from a statement set up by the comptroller of the Railway, he would receive the comptroller's salary. The plain fact is that Mr. Lyons performed work that could properly be done by a minimum rated clerk, stenographer or office boy; and in reality he performed the work of a lower rated rather than a higher rated position.

The Carrier assumes that your Board will, of course, give to this claim the consideration which it deserves and which we feel can be nothing other than an unqualified denial, unless you may desire to add a rebuke to the employes for bringing such a claim to your Board.

OPINION OF BOARD: The question here presented is primarily one of fact, namely, whether the Claimant was on September 11 and 12, 1944, temporarily engaged in fulfilling the duties of Position J-11 in the Joint Facility Accountant Office at St. Paul, or whether, due to a temporary increase in the volume of work, he was merely assisting the regular holder of said position? There is no showing with respect to any alleged violation of any agreement subsequent to September 12, 1944, and the claim will, therefore, be resolved upon the application of Rule 63 of the Agreement effective October 1, 1925, to the facts of the case.

The Carrier says that "the work performed by Mr. Lyons, which is the subject of claim herein, consisted solely in calling back with another employe from typed detailed statements and with the making of which he had nothing whatever to do." On the other hand, the Claimant has asserted upon oath that "he performed work on Position J-11 . . . on the authority of proper supervisory officer and without any help, assistance or supervision from the Auditor, Chief Clerk or incumbent."

The Claimant's daily work reports, made at the time, disclose that on September 11 he devoted 5½ hours to the recapping of back-pay bills and to the distribution of the same; and that on September 12 he was engaged in recapping all back-pay bills of the Milwaukee Railroad and in preparing an audit bill for the same, which was submitted over his signature. This detailed showing of the work actually performed by the Claimant refutes the Carrier's contention that he was solely engaged in calling off figures and data prepared

by others. In addition, the Carrier did not see fit to produce, in response to the demand of the Petitioner, the original bills prepared by the Claimant, nor was any excuse offered for not producing these documents. This circumstance is sufficient to justify the inference that if this information had been made available it would have been favorable to the claim.

Upon the basis of a preponderance of the evidence, together with the inferences to be drawn therefrom, it must be concluded that the claim has been established. Awards Nos. 2262 and 3032.

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 Carrier violated the effective Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1946.