

Award Number 3107

Docket Number CL-3063

**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 David R. Lind, Clerk, in the Joint Facility Accountant Office at St. Paul, Minnesota, for work performed on positions J-11, rate \$8.94 per day; position J-14, rate \$7.93 per day and position J-17, rate \$7.42 per day for each day involved since May 6, 1944.

2. That Clerk D. R. Lind, shall be compensated at the rate of the respective position each day required to perform the higher rated work and be paid the difference between the wage he should have received and his regular rate of \$7.05 per day which was allowed, retroactive to May 6, 1944.

**EMPLOYEES' STATEMENT OF FACTS:** In the Office of Joint Facility Accountant there are three clerical employees assigned to make and write up bills against other railroad companies as follows: Position J-11 bill tenants for use of joint line between St. Paul and Minneapolis, Minnesota; position J-14 bill tenants for use of joint facility on various arrangements Eastern and Western Districts; position J-17 bill tenants for joint use of the Minneapolis Passenger Station.

The three positions mentioned handling these joint line bills all paid a rate of pay that was higher than the Clerks position held by David R. Lind. Due to the increase in wages granted employees in January, 1944, made retroactive and applicable to the period from February 1, 1943 to December, 1943, inclusive, it became necessary to bill all tenant companies for the proportion of said back pay, which amounted to approximately \$92,000.00. The Clerks assigned to desks J-11, 14 and 17 were unable to bill said back pay within their regular assignment, and keep up their current bills to date, so the Management assigned Clerk David R. Lind 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 incumbents of the positions 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 the preservation of

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." It is indeed surprising to the Carrier, and we feel that it must, of necessity, be equally surprising to your Board, to find the employees in this case contending that Mr. Lind fulfilled the duties and responsibilities of position J-11, since what he did was to perform a simple mathematical computation and writing same into bill form. As previously stated, a totally inexperienced person with a knowledge of the rudiments of arithmetic could have performed the work which Mr. Lind did in this case. Certainly, it is a far cry between applying a given factor to an already established item, or to only a few items, namely, those referring to labor costs, than it is of his own knowledge and responsibility, on figures furnished by a Superintendent, to make up an itemized bill of 117 pages against another company. An engineer in preparing an estimate covering a job not infrequently may turn over the detail work of making extensions or other computations to a clerk, but that does not make the clerk an engineer or entitle him to an engineer's salary. Similarly, a lawyer in preparing a case for trial may often turn over a great deal of the detail work to clerks in his office, but that, by no means, makes such clerks lawyers or entitles them to the lawyer's fee for handling the case. The use of lower rated employees to assist higher rated employees is and always has been a very frequent procedure and one which has been unquestioned to this time. Necessarily in rendering such assistance such lower rated employee as in this case must perform some of the routine and less important duties of the higher rated position but that can, in no way, be considered as the fulfillment of the duties and responsibilities of such position, and this is particularly true in such cases as where the occupant of the higher rated position continues to be responsible for and to direct all of such work. As a matter of fact, it is largely through this procedure that employees qualify themselves for promotion to higher rated positions when opportunity offers, and it is also obvious that such assistance unless it would relieve the higher rated employee of some of the details of his work would be of no benefit to him. Incidentally, it may be stated in passing that since the performance of the work by Mr. Lind, which is the subject of this claim, an opportunity to fill a position considerably less demanding in its requirements than position J-11 occurred but Mr. Lind declined to bid on it, feeling himself incapable of handling it.

It is, therefore, the position of the Carrier that Mr. Lind was not temporarily assigned to a higher rated position since he most certainly did not fulfill the duties and responsibilities of a higher rated position, but simply assisted the occupant of such higher rated position in the performance of certain items of work of a very minor and routine nature, and accordingly requests that your Board so hold.

**OPINION OF BOARD:** During the period of approximately 5½ months immediately following May 6, 1944, the Claimant, regularly rated at \$7.05 per day, worked 625 hours, exclusive of overtime, on Positions J-11 (rate \$8.94), J-14 (rate \$7.93) and J-17 (rate \$7.42) in the Joint Facility Accountant Office at St. Paul. The work performed was incident to the giving of retroactive effect to the increases authorized by the National Wage Agreements of January, 1944. The Claimant contends that he is entitled to the differences between his regular rate and those applicable to the positions on which he worked, retroactive to May 6, 1944. This depends upon whether he was temporarily engaged in fulfilling the duties of the higher rated positions, or was merely assisting the regular holders of those positions, due to a temporary increase in the volume of work, within the meaning of Rule 63 of the effective Agreement of October 1, 1925.

There is in evidence an affidavit of the Claimant in which he states "that on or before May 6, 1944, and continuing until September 21, 1944, he performed work on positions designated as J-11, J-14 and J-17 in the office of Joint Facility Accountant, on authority of proper supervisory officer and

without any help, assistance or supervision from the Auditor, Chief Clerk or incumbents on the positions in question." It further appears that the Petitioner requested, if it did not demand, that the Carrier produce the original documents which the Claimant prepared or assisted in preparing. This data was not produced, nor did the Carrier offer any explanation for its failure to do so. This affords a basis for an inference against the Carrier's contentions.

We conclude that the preponderance of the evidence supports the claim. See Awards Nos. 2262, 3032 and 3106.

**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.