# Award No. 3873
# Docket No. CL-3902

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**James M. Douglas, Referee.**

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## PARTIES TO DISPUTE:

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

## THE PENNSYLVANIA RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

"(a) The Carrier is violating and continues to violate Rule 2-A-5 of the Clerks' Rules Agreement effective May 1, 1942 by working the position of Receiving and Deliveryman, Symbol FL-61, Louisville Freight Station, Louisville, Kentucky, less than eight hours per day each working day, due to the assignment of the incumbent of this position to the position of Foreman, Symbol FL-51, two hours and thirty minutes per day.

(b) C. F. Hoffman, Foreman, Position Symbol FL-51, be paid two hours and thirty minutes pay at the rate of time and one-half effective September 1, 1945, and all subsequent dates until this violation is discontinued." (Docket D-425)

**EMPLOYES' STATEMENT OF FACTS:** There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act. This Rules Agreement will be considered as a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

On September 1, 1945, the Claimant, C. F. Hoffman, Foreman, was regularly assigned to position Symbol FL-51-F, Freight Station, Louisville, Kentucky, tour of duty 7:00 A. M. to 3:30 P. M., with thirty minutes for lunch, relief day Sunday, rate of pay $213.96.

There is in existence at the Louisville, Kentucky, Freight Station a regular position of Receiving and Deliveryman, Symbol FL-61-F, tour of duty 9:00 A. M. to 6:00 P. M., one hour for lunch, relief day Sunday, rate of pay $177.96.

Effective September 1, 1945, the claimant, C. F. Hoffman, was relieved at the end of his tour of duty, i. e., 3:30 P. M., and the incumbent of position of Receiving and Deliveryman was assigned to the position of Foreman from 3:30 P. M. to 6:00 P. M., at the Foreman's rate of pay. The position of Receiving and Deliveryman was blanked from 3:30 P. M. to 6:00 P. M. each day.

tion of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employes of such other craft or class.

(4) Performance of work by employes other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this Rule (3-C-2) will not constitute a violation of any provision of this Agreement."

If the Claimant's contention in this regard is correct, the work here in dispute would have been properly assigned under the rule quoted above. The Foreman duties during the period in question could still be performed by the Receiving and Deliveryman.

The Carrier submits, therefore, that it was proper under the Agreement to assign the duties of Foreman to the position of Receiving and Deliveryman at Louisville Freight Station; that in so doing, the Carrier did not violate Rule 2-A-5 or any other provision of the applicable Agreement, and that there is no basis in the Agreement to support the instant claim.

**III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreement concerning rates of pay, rules, or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispuate in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION**

The Carrier has established that there has been no violation of the applicable Agreement and that the Claimant is not entitled to the additional compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

**OPINION OF BOARD:** This dispute concerns two positions at the Louisville Freight Station. One, the position of Foreman, a semi-excepted positon, had regularly assigned hours of 7:00 A. M. to 3:30 P. M. The other, a position of Receiving and Deliveryman had regularly assigned hours of 9:00 A. M. to 6:00 P. M.

The claim arises from the practice of Carrier in requiring the Receiving and Deliveryman to perform the duties of the Foreman from 3:30 P. M., when the Foreman went off duty, until 6:00 P. M., and during those hours blanking the Receiving and Deliveryman's position. While performing the duties of Foreman during such hours he received the Foreman's rate of pay.

Carrier bases its right to this use of the Resceiving and Deliveryman in the Foreman's position on a provision of the Scope rule which reads:

"When the duties of a position covered by this Agreement are composed of the work of two or more classifications herein defined in Groups 1 and 2, the classification or title of such position shall be determined by the preponderance of the work that is assigned to such position."

However, the mere reading of such rule shows it has no application to the situation here involved where the occupant of a regular position was assigned extra work of another position and required to suspend the work of his regular position to perform it.

It appears to us that Carrier in carrying out this practice has violated Rule 4-C-1, which reads:

"Employes will not be required to suspend work during regular hours to absorb overtime."

The occupant of the Receiving and Deliveryman's position was required to suspend the regular duties of his position from 3:30 P. M. to 6:00 P. M. or two and one-half hours per day in order to fill the Foreman's position. If the Receiving and Deliveryman had been permitted to work his regularly assigned hours, then the extra work assigned him in the Foreman's position would have been overtime.

Since the violation of the Agreement was for the purpose of absorbing overtime, the penalty should be at the overtime rate of the Foreman's position for two and one-half hours for each day the occupant of the Receiving and Deliveryman's position was required to work in the Foreman's position. See Award 3277.

The claim is not accurately drawn. It names C. F. Hoffman, the Foreman, as claimant. However, as we view the case the proper claimant is the occupant of the Receiving and Deliveryman's position. A mistake in naming the correct claimant is not inimical to the allowance of a valid claim. See Award 2282.

The occupant of the Receiving and Deliveryman's position is entitled to receive the difference between the amount paid him and what he would have received at the regular rate of his regular position plus two and one-half hours overtime per day at the Foreman's rate for each day he performed the Foreman's work.

**FINDINGS:** The Third Diviison 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 Carrier violated the Agreement as set out in the Opinion.

AWARD

Claim sustained for the penalty prescribed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of April, 1948.

## DISSENT TO AWARD 3873, DOCKET CL-3902

This Award through an unwarranted expansion of Rule 4-C-1 finds basis for holding that this is an apparent violation of that Rule.

The record in this case shows incontrovertibly that neither of the two employes involved, the Receiving-Deliveryman nor the Foreman suspended work during a single minute of their respective 8-hour tours of duty. The application of Rule 4-C-1 to such established facts could only be made, as stated, by unwarrantably expanding its meaning.

The misconstruction of the intent of the Agreement as a whole as it bore upon the assignments and the work here involved and the misconception of the Carrier's position are revealed in the third paragraph of the Opinion setting aside as having no application a quoted provision of the Scope Rule. Reasonable consideration of that provision shows that the Agreement intended to permit and to provide for exactly the same kind of assignment of work of two classifications comprehended in Groups 1 and 2 as was here made even though one of such classifications fell within those defined under Group 1 and the other within those defined under Group 2.

The arbitrary decision to cast aside this provision of the Scope Rule and to proceed, contrary to its plain implication, to expand the provisions of another Rule, 4-C-1, to hold that an Agreement with provision in its Scope Rule permitting work in each of two classifications defined under two separate groups also has in it provision to prohibit work in each of two classifications defined in one of those groups is to render decision that is contrary to reason.

Furthermore, the Opinion in granting reparation substitutes another for the named claimant. This innovation, too, is unwarranted and is without precedent.

/s/ C. C. COOK

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