

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee that J. C. Ferrell, Clerk, at Sacramento Freight Station be paid the difference between rate of Assistant Cashier, \$9.20 per day and Typist-Clerk, \$8.35 per day, from February 1, 1946 until he was relieved of duties constituting position of Assistant Cashier.

EMPLOYEE'S STATEMENT OF FACTS: Prior to February 1, 1946, J. C. Ferrell was regular incumbent on position designated as PBX Operator-Typist at Sacramento Freight Station at rate of \$8.35 per day. In addition to operating the PBX Board for Sacramento Freight Station Ferrell was also required to perform minor routine clerical work such as ordinarily performed by typists. On or about February 1, 1946 the PBX Board was removed from Sacramento Freight Station and Ferrell was then required to perform the following duties:

"Post PUD allowances from waybills and freight bills to Form 210.

Check monthly drayage bills rendered against this Company by contract drayman.

Mail receipted bills when payment has been received by mail.

Mail statement of charges and notice of arrival of freight on freight received, and prepaid freight forwarded.

Check freight bill case for delinquent bills, and telephone delinquent customers for prompt payment of such over-due bills.

Check freight bill case against delivery records to ascertain if freight still on hand or undelivered.

Furnish contract drayman with freight bills on such shipments as they are delivering, and check for payment of charges when such shipments have been delivered."

On or about April 15, 1946, Carrier indicated its desire to create a position to assist the Cashier at Sacramento Freight Station. As revealed by letter of Assistant Superintendent Macdonald, copy of which is attached hereto as Employees' Exhibit "A", the proposed duties of this position were as follows:

"Balance daily abstract with pro sheet and freight bills.

"THE WESTERN PACIFIC RAILROAD COMPANY

Office of Vice-President and General Manager
San Francisco

February 10, 1947
Case No. 2815-1946-Clks.
Local Case No. 1743
Western Division

Mr. R. J. McCarthy
General Chairman, B.R.C.
261 Pacific Building
San Francisco 3, Calif.

Dear Sir:

Referring to conference in my office February 7, 1947, between yourself as General Chairman, Brotherhood of Railway Clerks, representing Clerks on the Western Pacific Railroad, and Mr. H. R. Fegley, Assistant to General Manager, representing the Management of The Western Pacific Railroad Company, in connection with

Case No. 2815-1946-Clks.

Claim of the System Committee of the Brotherhood of Railway Clerks that J. G. Ferrell, Sacramento Freight Station, be paid the difference between rate of Assistant Cashier, \$9.20 per day, and Typist-Clerk, \$8.35 per day, from February 1, 1946, until he was relieved of duties constituting position of assistant Cashier.

DECISION: Ferrell was not required to perform the duties of an Assistant Cashier, and there is no justification for the higher rate demanded by you.

Claim is declined.

Yours truly,

/s/ H. A. Mitchell—HRF
Vice President & General Managers."

It is the contention of the Carrier that in good faith and in compliance with the provisions of the schedule, its representatives approached representatives of the Clerks' Organization for the purpose of negotiating a suitable title and rate for a position which was made necessary by changing conditions, and, that the duties warranting a higher rate were not assigned to any employee until they were given to the successful applicant for the new position.

At no time was Ferrell required to perform the higher rated duties and there is no justification for the retroactive penalty here demanded by the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: One J. C. Ferrell was employed as a PBX Operator-Typist at Carrier's Sacramento Freight Station, performing clerical duties in addition to operating the PBX Board. About February 1, 1946, the PBX Board was removed and Ferrell performed additional duties in helping the Cashier at the same Freight Office.

The Employees contend that such additional duties were the same as those embraced in the position of Assistant Cashier which was created by bulletin on June 28 and filled on July 1, 1946, and claim that under Rules 5, 7, 8 and 11 of the December 16, 1943 Agreement Ferrell is entitled to the Assistant Cashier's rate from February 1, 1946 until relieved of said duties.

The Carrier contends (1) that the additional duties performed by Ferrell were not the same as those embraced in the Assistant Cashier's position, and (2) that Ferrell's assistance to the Cashier was purely voluntary and not by reason of assignment.

Thus, before proceeding to determine the validity of the claim based upon an interpretation of the Agreement it is necessary to resolve the issues of fact presented.

At least in this respect the parties are in agreement, to wit: that Ferrell, whether by his own volition or by assignment, assisted the Cashier at Sacramento Freight Station. The record reveals that the nature of the assistance was as follows:

Post PUD allowances from waybills and freight bills to Form 210.

Check monthly drayage bills rendered against this Company by contract drayman.

Mail receipted bills when payment has been received by mail.

Mail statement of charges and notice of arrival of freight on freight received, and prepaid freight forwarded.

Check freight bill case for delinquent bills, and telephone delinquent customers for prompt payment of such over-due bills.

Check freight bill case against delivery records to ascertain if freight still on hand or undelivered.

Furnish contract drayman with freight bills on such shipments as they are delivering, and check for payment of charges when such shipments have been delivered.

The record further reveals that the duties proposed for the new position finally designated Assistant Cashier were the same as those tabulated above with this addition:

Balance daily abstract with pro sheet and freight bills.

Thus, the duties of the position which Ferrell performed, whether of his own volition or by assignment, were practically the same as those of position of Assistant Cashier, later so designated. True, the duties were not identical but that is not by any means a controlling factor. See Award 1861. In the light of this reasoning we feel that it is reasonable to conclude that from February 1, 1946 Ferrell performed the duties and assumed the responsibilities of the position of Assistant Cashier as subsequently formally created by Carrier bulletin.

With respect to whether or not Ferrell performed these duties of his own volition or by assignment, it appears from the record that in exchange of correspondence between the General Chairman and the Carrier antedating the designation of the position as Assistant Cashier, both the General Chairman and the Carrier's Assistant Superintendent referred to the position then occupied by Ferrell as that assigned to help Cashier. This would tend to indicate that Ferrell did perform duties in assisting the Cashier by assignment. On the other hand, as tending to counteract this indication, in denying Ferrell's claim the Carrier's Superintendent, by letter of August 5, 1946, stated that in his opinion Ferrell was not performing all the duties of an Assistant Cashier and that his claim apparently is based on some work which he performed of his own volition and for the purpose of qualifying himself for a better position. But that is after claim was made and we believe that greater weight should be given to what was said by the parties prior to the making of claim, for the reason that, intentionally or not, statements made after claim is made tend to be colored by either party in the light of the position which it seeks to sustain. Again, there is a letter in the record from the incumbent of the Cashier's position dated prior to the time that claim was made stating that Ferrell was not requested to perform duties of Cashier

while working position of PBX Typist-Clerk, and that Cashier's work performed by Ferrell was done on his own accord and he requested he be allowed to do this work in order for him to learn the duties of the Cashier's position. But this refers to the duties of Cashier and not of a position helping the Cashier. Another factor to be considered in attempting to resolve this question is this: it appears from the record that at the Sacramento Freight Office (Cashier's Office), Mr. Ferrell was the only clerical employe aside from the Cashier and it appeared that immediately prior to February 1, 1946, a circumstance occurred which caused increased activity in the Cashier's Office with respect to the policing of delinquent freight bills. With the abolition of the PBX Board it seems logical to assume that the routine clerical duties theretofore performed by Ferrell would not occupy his full time. What then would be more likely than for Carrier to require Ferrell to assist in the performance of such policing work, which was a part of the duties of the position of Assistant Cashier when finally so designated? On the whole record and surrounding circumstances, we believe that the preponderance indicates that Ferrell performed these duties by assignment. There is, of course, no doubt that the Carrier in any event secured the benefit of Ferrell's services on many of the elements of an Assistant Cashier's position. Having determined that by assignment, from February 1, 1946, Ferrell performed the duties and responsibilities of Assistant Cashier's position formally created by bulletin on June 28, 1946, can it now be said that he is entitled to the difference in pay between his designated position of Typist-Clerk and the position of Assistant Cashier?

We believe that it can under the provisions of Rule 5 and Rule 11 of the Agreement. It has frequently been said by this Board that it is the responsibility of the Carrier to police the agreement. Hence, when it became known to the Carrier that a change in the requirements of the PBX Typist-Clerk position would become necessary by reason of the removal of the switch-board, proper designation and classification of the new duties should have been undertaken. If such proper designation and classification were made under Rule 5, this position would have been designated and classified as Assistant Cashier on February 1, 1946. Then, under Rule 11 in the light of our previous conclusions, Ferrell would have been entitled to the pay of the higher rated position during his temporary assignment. We believe that where a rule has been violated we should treat as done, that which should have been done. We, therefore, hold that the claim should be sustained.

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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of October, 1948.