Award No. 4313
Docket No. CL-4196

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR CO.; THE ORANGE & NORTHWESTERN RR CO.; IBERIA, ST. MARY & EASTERN RR CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RAILWAY CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

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

(a) The Carrier is violating the Clerks' Agreement in the Store Department at Kingsville, Texas, by requiring the Night Counterman, a Group 2 employe, to perform higher rated work of a Stock Clerk while being paid the lower rate of Counterman. Also,

(b) Claim that the Counterman be paid the higher rate of Stock Clerk retroactive to date this claim was formally presented to the Carrier.

EMPLOYES' STATEMENT OF FACTS: On January 30, 1946 representatives of the Carrier and the Organization conferred regarding Day Counterman and Night Counterman in the Store Department at Kingsville being required to perform higher rated work of a Stock Clerk. The work involved consisted of making receiving sheets, posting material received on purchase orders and writing requisitions.

The Carrier agreed that the work involved was not work properly assignable to a Counterman and such work was removed from the Day Counterman and assigned to the Store Foreman. At the same time, however, the Carrier refused to remove that same type of work from the Night Counterman,

ment that all positions doing more than four hours clerical work shall be classified in Group (1) insures those positions to members of the Group. There is no provision insuring positions regularly requiring less than four hours per day of clerical work to groups (2) and (3). Since one group only is thus expressly protected it must be concluded that a like protection for the others would have been expressed if intended. Group (1) seems to have been considered a higher or more desirable classification and the rule seems to have been intended to prevent underclassification of those positions in which clerical work preponderates. It has been consistently recognized by this Board that a certain amount of incidental clerical work necessarily attaches to a great many positions not rated as clerical. The Agreement falls far short of providing that those who are required to do clerical work for more than four hours per day shall not be permitted to do any other work for the remainder of their eight hour six day weekly assignment. The work here involved was not sufficient to fully occupy the time of one employe. It included some service ordinarily performed by a stock man and some ordinarily performed by a clerk."

The above referred to awards confirm the applicability of Rule 2 in the determination of disputes such as the one under consideration.

Award 2012 also covered a case where Employes contended their agreement was being violated account allegedly assigning higher rated work to lower rated employes. The following is quoted from "Opinion of Board" in Award 2012 which denied the Employes' contention and claim:

"It is the understanding of the referee, and probably of the general public, that these agreements are made for the purpose of promoting harmony in the relationships between labor and management in the railroad industry, and that neither party to the agreements intends nor expects that they shall be so construed and applied as to promote discord, inefficiency, or a wasteful application of the revenues of the railroad in its efficient operation for the benefit of the public as well as for the benefit of labor and management. Certainly the public, the employes, and the management all realize the importance of fair and just treatment of labor by management; and this is exemplified by the Act of Congress from which we derive our powers.

Management cannot run a railroad without labor; and labor cannot run a railroad without management. Neither of them, nor both together, could run a railroad without capital; and we as an adjustment board, could not exist except by a power given through Congress which represents the public, which is not only disinterested as to small disagreements, but is highly impatient with them. Our duty to the public, the management, and labor, is fairly to examine these agreements from one end to the other, modifying each sentence and paragraph by the provisions of each and every other sentence and paragraph, so that the whole instrument may be applied with reasonableness, without discrimination and in the interests of harmony."

On the basis of the facts and circumstances involved in this case, together with the provisions of Rule 2 of the agreement, it is conclusively evident that the contention and accompanying claim of the Employes is entirely without justification or basis. Therefore, it is the position of the Carrier that the contention of the Employes be dismissed and the accompanying claim accordingly denied.

(Exhibits not reproduced.)

OPINION OF BOARD: For a period of years the Night Counterman, a Group 2 employe of Carrier, at Kingsville, Texas, has been required to perform a certain amount of work involving the making of receiving sheets, posting material received on purchase orders and writing requisitions. The

same type of work was formerly required of the Day Counterman, but on protest from the Organization, the Carrier removed it from said position and assigned the work to a Store Foreman. Employes, relying on Rule 50, claim the Night Counterman by reason of performing such work is entitled to the higher rate of Stock Clerk. Carrier relies on Rule 2 (a) asserting that no more than three hours of clerical work is assigned to the Night Counterman position. The rules above referred to provide as follows:

"Rule 2. Classification

(a) Employes who are used three (3) hours or more for the majority of the working days of the month, in the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work and to the operation of office mechanical equipment and devices shall be designated as clerks. The above definition includes Station, Storehouse and Warehouse Foremen, Checkers, Talleymen, Deliverymen, Ticket Clerks, Yard Checkers, and Crew Dispatchers.

(b) Clerical work in excess of three (3) hours shall not be assigned to more than one position on the same shift not classified as a clerk.

(c) The above definition shall not be construed to apply to the Group 2 or Group 3 employes listed in Rule 5."

"Rule 50. Preservation of Rates

(a) Employes 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; employes 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 employe, due to a temporary increase in the volume of work, does not constitute a temporary assignment."

The determination of this controversy devolves upon a resolution of the issue as to whether Rule 2 or Rule 50 applies to the facts under consideration. Both rules were put into the Agreement for a purpose. Rule 2, obviously, for the purpose of correctly classifying a position. Rule 50, for the purpose of protecting the rate structure under the Agreement.

There is little doubt that Group 1 positions are responsible, generally speaking, for a higher class and better paying type of work than Group 2 employes. Yet, it is recognized under Rule 2(e) that Group 2 employes may perform up to three hours of work of something of the same quality as Group 1 employes. As a protection against an abuse of the rule by the Carrier, Section (b) was written into the Rule. Such a provision is manifestly necessary, for without it the Carirer by juggling of duties could avoid the establishment of Group 1 positions. Now, Rule 50 literally construed could be completely destructive of Rule 2, for if a Group 2 position is assigned any work of a Group 1 classification (which generally speaking is higher paying) then it would have to be paid at a higher rate under a literal construction of Rule 50. Certainly, the two rules were written so as to exist side by side and when interpreted in the light of the purposes intended by each there is not that conflict which seemingly is evident in the wording thereof. Rule 50 protects the rate of a properly classified position which has been duly negotiated by the Carrier and the Employes. It assures to an employe performing work of a higher paying position on a temporary or permanent basis the higher rate. On a transfer of duties from one position

to another, it has the effect of preserving the higher rate. On the abolishment of a position, it assures that the rate thereof will follow the work. This protection is afforded by Rule 50, generally speaking, regardless of the amount of time required to perform the duties of the higher rated position. (See Awards 751, 2262, and others.)

Which rule applies in this situation? In the first instance, as appears from a letter in the record from the General Chairman to a Carrier official, dated February 4, 1946, discussing this claim, the Employes considered Rule 2 applicable for there the General Chairman spoke of the Night Counterman being assigned approximately half of his time to the making of receiving sheets and other types of clerical work and demanded a **reclassification** and claimed compensation until such time as the position was properly **classified.** Again, on March 16, 1946, the General Chairman stated that the Night Counterman devoted approximately 50 percent of his time to this work and suggested a joint check. In their brief to this Board, the Employes have about abandoned their reliance on Rule 2 and have cited Rule 50 in support of their claim.

We believe the original position taken by the Employes with respect to the applicable rule in this instance is the correct one. Awards cited by the Employes concerning the applicability of Rule 50 do not involve the like factual situations. Award 751, which is one of the earliest, involved the transfer of work from a higher rated position which was abolished to a lower rated position and the Board held, correctly in our opinion, that the preservation of rate rule in that agreement prevented such action on the part of the Carrier and rejected Carrier's contention that a rule similar to Rule 2 in the Agreement herein permitted such transfer. Others involved the transfer of work from one seniority district to another and temporary assignment to higher rated duties. We admit that the dividing line is a thin one, but keeping in mind the evident intent and purpose of the two rules and the view which the Employes themselves placed upon the same originally, we think it clear that Rule 2 is the applicable one. If the duties of an abolished position or if a change in duties of the position were involved, our conclusion might well have been different.

Having determined that Rule 2 is involved, the next question for resolution is whether or not the Employes have made out a case showing violation of the Agreement. We think not. There is evidence that the Employes were willing to agree to a joint check of the time spent by the Night Counterman in the performance of clerical work and that no such joint check was made. This might to some extent create a presumption that such check if made might result in findings of fact unfavorable to Carrier. However, a check of the work of the position was made by the Night Counterman himself in April of 1948 for a two week period and on no one shift did the figures approach the three hour limitation in Rule 2. If the question of the amount of work were closer, we believe a joint check would be in order, but here we do not believe that the Employes have furnished sufficient evidence to effectively rebut the figures found by the incumbent of the position. As a matter of fact, it is not unreasonable to presume that the reason for the abandonment of the position with respect to the applicability of Rule 2 and reliance on Rule 50 is due to an inability to establish that three hours clerical work is performed by the Night Counterman.

It follows from what we have said above that the Carrier has not violated the Agreement and the claim is, therefore, denied.

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

AWARD

That the Carrier did not violate the Agreement.

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1949.