

Award No. 5922

Docket No. CL-5894

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the terms of the Clerk's Agreement when:

(1) From January 10, 1949, to March 12, 1949, inclusive, the Carrier assigned various Traveling Auditors (who are wholly excepted from the current Agreement extant between the parties) to the Local Freight Office at Memphis, Tennessee, for the purpose of compiling and bringing up currently the back-log of the uncollected and over accounts in said office, and by reason thereof, permitted such Traveling Auditors to expropriate such clerical work in direct violation of the provisions of the effective Agreement between the parties and to the detriment of employees in said office who were deprived of that work.

(2) That the Carrier now be required to reimburse Paul L. Overall and all other employees* adversely affected for any monetary losses sustained, at the rate of the Utility Clerk's position on overtime basis, predicated on Two Thousand Eighty (2,080) Hours required of the employees (Traveling Auditors) excepted from the Clerks' Agreement to complete that clerical work, as per table shown below, which table is an itemized summary of the days in which such clerical work was performed by the Traveling Auditors; number of Traveling Auditors employed on a given day, hours worked, and total number of hours which the employees covered by the scope of the current agreement were deprived of an opportunity to perform such clerical work:

DAYS									
Jan. 10 to Jan. 31, 1949	19	2	Auditors	8 hrs.	each per day	Total	304 hrs.		
Feb. 1 to Feb. 3, "	3	4	"	8 hrs.	"	96	"		
" 4 to " 9, "	5	6	"	8 hrs.	"	240	"		
" 10 to " 12, "	3	12	"	8 hrs.	"	288	"		
" 14 & " 15, "	2	10	"	8 hrs.	"	160	"		
" 16 & " 17, "	2	2	"	8 hrs.	"	32	"		
" 18 " "	1	8	"	8 hrs.	"	64	"		
" 19 " "	1	2	"	8 hrs.	"	16	"		
" 21 " "	1	1	"	8 hrs.	"	8	"		

DAYS						
"	23	"	"	1 8	" 8 hrs.	" 64 "
"	24	"	"	1 9	" 8 hrs.	" 72 "
"	25	"	"	1 8	" 8 hrs.	" 64 "
"	26 & Feb. 28,	"	"	2 6	" 8 hrs.	" 96 "
Mar.	1	"	"	1 7	" 8 hrs.	" 56 "
"	2 to Mar. 4,	"	"	3 8	" 8 hrs.	" 192 "
"	5 to "	"	"	1 7	" 8 hrs.	" 56 "
Mar.	7 & Mar. 8,	"	"	2 6	" 8 hrs.	" 96 "
"	9 to "	"	"	1 7	" 8 hrs.	" 56 "
"	10 to "	"	"	1 6	" 8 hrs.	" 48 "
"	11 to "	"	"	1 5	" 8 hrs.	" 40 "
"	12 to "	"	"	1 4	" 8 hrs.	" 32 "
TOTAL				53		2,080

*NOTE: The reparation due individual employes be determined by joint check of Carrier's record by Management and employes' representatives.

EMPLOYES' STATEMENT OF FACTS: Prior to February 1943, it was the duty of the Station Accountant (Excepted Position) in Local Freight Office at Memphis, Tenn., to work up all of the uncollected accounts, which functions, of course, was in addition to other duties attaching to said position. As time went on, the work-load on the Station Accountant's position increased to such an extent that it became too burdensome for one man to handle, consequently it was obvious that in order to have such work kept up currently, additional help had to be provided to obtain the necessary results. Therefore, following several conferences between the Management and Employes' Representatives, position of a "Utility Clerk" was established on February 24, 1943, for the primary purpose of having the Utility Clerk take over some of the Station Accountant's work, such as; handling Government Bills of Lading, uncollected, etc., and as circumstances warranted, to perform other clerical work as may be assigned to the occupant of said position.

It is only fitting to relate here that during the conference between the parties preceding the establishment of Utility Clerk's position, the particular question then in dispute was the rate of pay for that position. Contentions advanced by the Employes' Representatives were based primarily on the fact that the incumbent of said position would be required to take over some of the duties and responsibilities attaching to Station Accountant's position. The question at issue was amicably resolved by agreeing on rate of \$7.71 per day. (Now \$14.94 per day). Thereafter, it followed that from February 1943 to September 1947, the Utility Clerk performed that class of work.

It is also fitting to relate here that during these conferences, the Management agreed that—any class of work transferred from an excepted position to a newly created position under the coverage of the Clerks' Agreement, that such work would remain on the position covered by Agreement and become the duties and responsibilities thereof. This agreement and understanding was reiterated by Superintendent of Stations, Mr. W. M. Hale, at a conference in Memphis, Tennessee, on April 11, 1944.

Beginning with September 1947, the Accounting Department in Chicago, changed the procedure in which the uncollected and over statements were rendered to the Freight Agent. This change in the modus operandi brought about a great deal of delay in the handling of uncollected accounts at Memphis Freight Office. It is a matter of record that during the balance of year 1947, and all of year 1948, the uncollected accounts at Memphis were not

arrangements are made to work all other items in the account which should be cleared by adjustment, relief claim, correction, or other handling. The traveling auditors are experts in this work with a broad knowledge of all phases of station accounting and with a thorough knowledge of the accounting procedures of the Office of Auditor of Passenger and Station Accounts, where control accounts are maintained. Traveling Auditors must verify uncollected and unapplied cash in every station audit and have done so for many decades.

5. With the advent of machine accounting in the Office of Auditor of Passenger and Station Accounts, there was an increase in the number of items in uncollected and unapplied cash accounts at Memphis Freight Agency as well as at all other stations on the railroad. At Memphis Freight Agency, instead of reanalyzing each item repeated on the uncollected statement month after month, the Station Accountant analyzed only new items which could be cleared by local forces.

6. No amount of work by the Memphis Freight Agency forces could have removed the old repeated items from the station accounts, because they resulted from imperfections and discrepancies in the new machine accounting system established in Office of Auditor of Passenger and Station Accounts.

Carrier submits that all work that should have been performed by clerical forces in the 1949 audit at Memphis Freight Agency was performed by them; that the traveling auditors performed only the same work that it is their duty to perform in every station audit; that Claimant Overall and other unspecified claimants lost no work thereby; that there is no basis for a joint check of Carrier's record by management and employees' representatives as requested by Employees; and that claim should be denied.

All data contained in this submission have been presented to Employees in correspondence or conference, and are made a part of the question in dispute.

OPINION OF BOARD: This claim is based on the premise the Carrier assigned Traveling Auditors, who are excepted from the current Agreement, to compile the back-log of uncollected and over accounts in its Memphis Freight office and by reason thereof took work from clerical employees in direct violation of the scope rule of such Agreement.

The facts relied on by the parties in support of their respective positions are set forth in their submissions and will not be repeated. A review of the record discloses the Agreement as executed expressly provides the terms thereof should not apply to the position of station accountant at Memphis and that prior to and on its effective date the work in question was performed by the occupant of such excepted position. In that situation it cannot be successfully argued the effective scope rule, providing these rules shall govern the hours of service and working conditions of clerical employees, gave clerical employees the exclusive right to perform such work or took from the Carrier the right to continue to assign it to the station accountant. Having concluded the scope rule in and of itself did not preclude Carrier from assigning the involved work to the occupant of the excepted position of station accountant it follows such work could properly be assigned to the occupants of other excepted positions—in this case traveling auditors—without violating the Agreement unless by reason of other conditions and circumstances it had been brought within the scope of the Agreement.

The Organization insists it now has the exclusive right to performance of the involved work because effective February 24, 1943, the Carrier established the position of Utility Clerk in the Freight Office for the sole purpose of working the uncollected and over accounts at that location. It is true that as of the date mentioned Carrier did establish a new position of Utility Clerk at such office by bulletin, prescribing its duties, and that thereafter the position was assigned to and occupied by a Utility Clerk. It is also true that on March 24, 1947, the Carrier advertised a vacancy on this newly created position which reads:

"The position No. 582 as Utility Clerk in the Accounting Department is open for bid. Rate of pay \$9.91 per day.

"Duties: Assisting Station Accountants handling Government bills of lading, uncollected, etc., and any other work assigned to him in this or other departments as directed.

"Applicant must be qualified to handle any work in any department."

At this point it should perhaps be stated that the language prescribing the duties of the position was identical in both of the bulletins to which we have referred, also added that P. L. Overall named in the claim and herein-after referred to as the Claimant, became and was the occupant of such position on all dates in question by reason of having displaced the employe who bid it in under the terms of the above quoted bulletin.

While it must be conceded the position of Utility Clerk was created we do not agree with Carrier's contention respecting the purpose for which it was established. Our view is that it was established for the purposes set forth in the bulletin, i.e., to assist the Station Accountant in handling bills of lading, uncollected accounts, etc., and to perform any other work in the Station Accountant's Department or other departments as directed. Indeed in Award 3464, where the Organization was making a claim this same work (working uncollected freight charges accounts), and other work, belonged to the occupant of this same position and could not be performed by the Station Accountant because as Utility Clerk he had been performing it as a part of his assigned duties, we denied the claim and in the opinion said:

"The duties of the station accountant are many and varied, and are set forth in the Carrier's submission. The work claimed to have been assigned regularly to the utility clerk is set forth in the employe's submission. When the position was bulletined it disclosed the duties thereunder to be 'Assisting Station Accountant handling Government bills of lading, uncollected, etc., and any other work assigned to him in this or other departments as directed. Applicant must be qualified to handle any work in any department.' It is obvious, when the position was bid in, the nature of the employment was understood between the parties, and the requirements thereof were likewise understood. When the utility clerk was required to do the work of the switch-order-clerk, he was performing a utility duty. The duties that he regularly performed constituted excess work, or overflow, from the position of station accountant."

We adhere to what was said and held in Award 3464. Without more, since the record discloses the duties of the position bid in and occupied by Claimant are the same now as they were then, we believe it is sound precedent for the conclusion, even though it be conceded his work on uncollected and unassigned accounts had been discontinued, that Carrier did not violate the Agreement when it permitted its Traveling Auditors to work such accounts during the progress of the general audit made by such employes at its Memphis Freight office and we so hold. The fact, as Claimant points out, that the work was assigned to other excepted positions instead of the excepted positions of Station Account affords him no sound ground for complaint under the existing facts and circumstances.

In an obvious attempt to forestall the foregoing conclusion Claimant contends there is an Agreement between the parties to the effect whatever work was turned over to him as a part of the duties of his assigned position was to belong to and be performed by him or any occupant of the position of Utility Clerk thereafter. There is no evidence of record sufficient to sustain such contention, hence it cannot be upheld.

We find nothing in the facts of record, the arguments advanced by Claimant, or the decisions cited in support of his position which, in our opinion, warrants a sustaining award. Therefore, his claim must be 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 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 did not violate the Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of September, 1952.