# Award No. 6015
# Docket No. CL-6039

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Fred W. Messmore, Referee**

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## PARTIES TO DISPUTE:

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

## THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

(a) That Carrier violated rules of the currently effective Agreement when, commencing September 20, 1950, and continuing thereafter to and including November 13, 1950, it required Turner Rouse, Jr., regularly assigned to position of Yard Clerk, rate $11.76 per day at Pittsburg, Kansas, to suspend work on his regular assignment and to fill position of Ticket Clerk, rate $12.00 per day at Pittsburg, Kansas.

(b) That Turner Rouse, Jr. be allowed a day's pay at Agreement rate of $11.76 per day, attached to his Yard Clerk assignment, in addition to that already allowed by Carrier, namely, $12.00 per day, attached to the Ticket Clerk's assignment for each day during period September 20 to November 13, 1950, inclusive, that he was held off his regular assignment to fill the Ticket Clerk's job assignment.

**EMPLOYES' STATEMENT OF FACTS:** The Ticket clerical force at Pittsburg Station and the personnel thereof prior to September 10, 1950, was as follows:

| NAME | POSITION | HRS. OF ASSIGNMENT | REST DAYS |
|---|---|---|---|
| John Griffith | Ticket Clerk | 8:00 a.m.—5:00 p.m. | Saturday & Sunday |
| W. A. Hood | " " | 11:30 p.m.—8:30 a.m. | Tuesday & Wednesday |
| Loyd Beasley | " " | Sundays and Mondays—10:00 a.m.—7:00 p.m. | |
| | | Tuesdays and Wednesdays—11:00 p.m.—8:30 a.m. | |
| | | Thursdays—4:00 p.m.—12:00 midnight | |
| | | | Rest days—Fridays and Saturdays |

September 11, 1950, Superintendent Martin notified Mr. Rouse to suspend work on his regular assigned position of Yard Clerk, 10:00 p.m. to 6:00 a.m., rate $11.76 per day in order to assume the duties normally at-

Rule 44 unequivocally provides that employes temporarily or permanently assigned to higher rated positions shall receive the rate of the higher position while occupying such position; and that a 'temporary position' contemplates the fulfillment of the duties and responsibilities of the position during the time involved. This rule, therefore, specifically contemplates using an employe off some other position. The employes have recognized this right in the past, without protest, and it is further evidenced by paragraph (f) of the Extra Board Agreement, wherein is provided:

> "(f) Where the regular force in an office is rearranged so as to competently fill a temporary vacancy, the position finally made vacant will be filled from the extra board."

It may be alleged that the words 'in an office' does not mean that the use of a yard clerk from an office located a mile away from the station is "in an office"; however, these employes are all located in the same town, are on a common seniority district, and have equal seniority rights. In other words, Rouse could have bid in the ticket clerk position.

The vacancy on the Yard Clerk's position, created by using Rouse as ticket clerk, was filled from the extra board, as provided by paragraph (f) of the Extra Board Agreement. The job was not blanked. The organization lost no position. No clerk lost any money.

There was no absorption of overtime involved as these two positions were asigned to practically the same hours. Claim was originally made for overtime—in addition to the penalty pay for a full day, as is now before the Board, but that has been dropped, possibly figuring they could not get both penalties and hoping to get the greater one.

This is strictly an attempt to collect a penalty merely for penalty's sake, and to secure a new rule.

Claim should be denied and this Division is requested to so hold.

All data submitted herein are known or have been made known to representatives of claimant by correspondence or in conference.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts are not in dispute. Turner Rouse, Claimant, at the time of this dispute was assigned as Yard Clerk at Pittsburgh, Kansas, with hours from 10 p.m. to 6 a.m., rate $11.76 per day. W. A. Hood held the regular assignment as Ticket Clerk at Pittsburgh, with hours from 11:30 p.m. to 8:30 a.m., at the rate of $12.00 per day. W. A. Hood was called into the military service and at the close of the day's work Monday, September 11, 1950, was relieved by the Carrier. The position he left was filled by Ticket Clerk Beasley on Tuesdays and Wednesdays, the regularly assigned rest days of Ticket Clerk Hood. In addition to Ticket Clerk Beasley, Ticket Clerk John Griffiths, in the same office, worked the first Ticket Clerk position, hours 8 a.m. to 5 p.m., rest days Saturday and Sunday.

Claimant was requested to protect Ticket Clerk's position at Pittsburgh, starting September 14, 1950, on account of Hood being called into military service, and was assigned thereto under rules of the Agreement. Rouse's position was filled by an Extra Clerk not competent to fill the Ticket Clerk's position vacated by Hood.

The Ticket Clerk's position was advertised as provided for in the Agreement between the parties, September 5, 1950, and on September 12, 1950 it was assigned to J. C. Strickland on Relief Clerk position at Fort Smith, Arkansas, a station in the same seniority district as Pittsburgh, Kansas.

The Carrier states the position was bid in by one man who, after looking the situation over, decided he could not handle the job and refused to accept it. The Ticket Clerk's job thereupon was again advertised, but this time there were no bidders therefor. There were no extra or furloughed employs qualified as Ticket Clerks and the Carrier was unable to employ anyone to work th position. The Employes assert that Claimant agreed to handle the Ticket Agent's job at Pittsburgh for a few days, until the Carrier could transfer Strickland to Pittsburgh; also, Claimant requested in writing that he be returned to his position as Yard Clerk, but the Carrier informed him that he could not be relieved as he had requested on October 2, 1950, as no Clerk competent to fill the position was available. On the basis that Claimant was under the impression that he would fill this Ticket Clerk's job for a few days, no claim was made until September 20, 1950.

It appears also that the Ticket Clerk's position was filled by transferring Strickland to it November 13, 1950.

Claimant contends that the Carrier violated Rule 38 of the Agreement between the parties bearing effective date of April 1, 1943, revised effective September 1, 1949, and November 1, 1949, in instructing Claimant to leave his own position or "suspend work" therefrom during regular hours to, in effect, absorb overtime of the other two Ticket Clerks, Griffith and Beasley who would have worked Hood's former Ticket Clerk position on an overtime basis.

Rule 38 of the Agreement reads: "Employes will not be required to suspend work during regular hours to absorb overtime."

The Carrier relies on Rule 44 of the Agreement which provides:

"Preservation of Rates:

"(a) Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates for the full day while occupying such position; employes temporarily assigned to lower rated positions shall not have their rates reduced."

"(b) A 'Temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time involved."

Paragraphs (a), (f), and (g) of the Memorandum of Agreement between the parties, dated June 13, 1950, governing manner of working extra board employes are set forth:

"(a) Extra board employes will be called upon to fill whatever Rule 10 and Rule 11 (Rule 11 is not relevant to this case) vacancies occur in Group 1 and Group 2 positions which are not otherwise filled by rearrangement of office forces."

"(f) Where the regular force in an office is re-arranged so as to competently fill a temporary vacancy, the position finally made vacant will be filled from the extra board."

"(g) In the event regularly assigned employe or furloughed employe is being used to fill temporary vacancy account no regularly assigned extra board man available, the regularly assigned extra board man, when available, will, if competent, be permitted to displace regularly assigned employe or furloughed employe from such temporary vacancy regardless of seniority."

Rule 10, referred to, provides:

"Bulletined positions may be filled temporarily pending an assignment, and in the event no applications are received from

employes covered by this agreement, the assignment may be made by appointment."

The Carrier contends it was confronted by an emergency by Ticket Clerk Hood being called into military service, and due to the volume of work at the Pittsburgh station it was necessary that the job left vacant by Hood be filled at least until such time as it could be filled in accordance with the Agreement and Memorandum Agreement between the parties. Therefore, Carrier concludes, in view of the foregoing upon which it relies, there is no basis for this claim. What was done in the instant case was in conformity with the practice down through the years. The only penalty involved where regular forces are rearranged is set forth in Rule 44 which requires payment of the higher rate which was applied to Claimant in the instant case.

We are not in accord with the Carrier that an emergency existed by Hood being inducted into the military service. Events of this nature are common and an everyday occurrence, as distinguished from sickness or accident, or some unforeseen occurrence that could not be anticipated.

The Carrier's claim that under Rule 44 it had the right to temporarily assign Claimant to work at Ticket Seller's position during his regularly assigned hours as Yard Clerk without regard to the provisions of Rule 38, and hence such rule has no application to a determination of the instant controversey, is not new, and we have little difficulty in concluding it cannot be upheld. Such claims have been definitely rejected by repeated decisions of this Division of the Board on the basis that rules similar to Rule 44 constitute merely rating provisions, and are not to be construed in such manner as to impair the effectiveness of rules prohibiting suspension of work to absorb overtime. See Awards 2859, 2823, and 3416.

Rule 38, relied upon by Employes, is clear and unambiguous. No exceptions are to be found therein. That its terms encompass overtime absorbed by an employe suspended during regular hours on the position of another employe as well as his own position, is no longer an open question. We have expressly so held. Award 2823. Other decisions placing a like construction upon the rule sustaining claims based upon its alleged violation by reason of a suspended employe having absorbed overtime on a position other than his own are so numerous that they hardly require citation. See Award 5105. See, also, Awards 4499, 4500, 2695, 3873, 3301, 4646, 4690, 4692, 2859, 4352, 3416, 3417, cited therein, and in accord therewith, see, also Award 5834, as set forth in Award 5578, this Division.

Starting with our Award No. 2346, and continuing to the present time, we have uniformly held that to require an employe to suspend work on his regularly assigned position in order to work on another position, except in emergencies, is considered to be a suspension of work to absorb overtime in violation of the rule prohibiting such action.

Thus, in effect, the Carrier here is asking us to overrule that consistent line of decisions. Certainly among the fundamental purposes sought to be achieved by the establishment of this Board were (1) uniformity in interpretation of rules, (2) stabilization of relationship between the Carriers and Employes organizations, and (3) diminishment of causes for disputes between them. To overrule our prior decisions which uniformly interpreted the no suspension of work to absorb overtime rules, would be subversive to those fundamental purposes. Under such circumstances, if a change is proper and desirable, we think it should be obtained through the amendment of the rules by the parties, rather than by overturning our prior Awards.

The Carrier's contention cannot be sustained.

With reference to paragraph (f) of the Memorandum Agreement, it has to do with a situation where the regular office force in one office is re-

arranged. Paragraph (*f*), supra, applies in an office if employes who are upgraded are agreeable to moving off their positions.

We conclude, for the reasons given herein, 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 claim should be sustained.

AWARD

Items (a) and (b) of the claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of November, 1952.