

Award No. 6318
Docket No. CL-6351

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE WICHITA UNION TERMINAL RAILWAY COMPANY

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

(a) Clerk Clyde E. Russell and/or other occupants of Chief Ticket Clerk Position No. 12 shall be paid two and one-half hours (2'30") at rate of time and one-half his regular rate for each day he is required to suspend work on his regular position to perform the duties of Ticket Agent, retroactive to May 16, 1951; and,

(b) Clerk Clyde E. Russell and/or other occupants of Position No. 12 shall be paid two and one-half hours (2'30") at the rate of \$425.00 per month for each day he is required to perform the duties of the Ticket Agent, retroactive to May 16, 1951.

EMPLOYEES' STATEMENT OF FACTS: Mr. Clyde E. Russell is the regularly assigned occupant of Chief Ticket Clerk Position No. 12, Ticket Office, Wichita Union Terminal Railway Company, Wichita, Kansas. The rate of pay of this position as of the date the instant claim arose was \$16.14 per day, subject to cost of living adjustments each quarter as provided by the so-called National Wage Agreement of March 1, 1951. The position is assigned 7:30 A. M. to 4:30 P. M., exclusive of meal period, five days per week, Monday through Friday, rest days Saturday and Sunday. The normal duties assigned to the position of Chief Ticket Clerk occupied by Mr. Russell prior to the date the instant claim arose were as follows:

- Prepare Ticket Refund Claims
- Keep Pullman Report and Pullman Books
- Make Santa Fe Coupon Report
- Make Coupon Tickets for Rock Island and Frisco Agents
- Answer Telephones
- Answer Correspondence
- Sell Tickets
- Check Tariffs and Ticket Stock

In requiring the Chief Ticket Clerk to give the Agent assistance for not to exceed two hours and thirty minutes each day in handling the work which had previously been performed in its entirety by the Agent, which insofar as the Chief Ticket Clerk is concerned, did not constitute the taking over of the fulfillment and responsibilities of a complete unit of work, and which in fact is completed by and for which the Agent is responsible, does not require the Carrier to pay him at the Agent's rate of pay and the action in giving him this work was not taken by the Carrier for the purpose of evading any of the rules of the Agreement.

The Third Division has repeatedly held in the interpretation of rules in effect on other Carriers exactly similar to this Carrier's Rule 55 that the exclusion of a position from the Agreement, as in the instant dispute, the position of Agent being an excepted position, definitely closes the door to any claim that such an employee or any of his duties are subject to the terms of the Agreement. For example, in the "Opinion of Board" in Third Division Award 2012 there is a complete exposition of the Board's position in a case so closely paralleling the principles entering into the instant dispute as to leave no doubt of the integrity of the Carrier's position in the instant dispute. Also see Third Division Award 2334.

Rule No. 58 is the rule which provides that established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules. The instant dispute does not involve the discontinuance of any established position subject to the Clerks' Agreement, or not so subject. No new position was created. No action has been taken to evade the application of the Agreement rules. This rule simply has no application whatsoever to the instant dispute.

In conclusion, the Carrier reiterates that its action on May 16, 1951, in relieving the Chief Ticket Clerk of not to exceed two hours' and thirty minutes' work each day and instructing him to devote that much time each day to assisting the Agent, a position excepted from the Clerks' Agreement, does not, under any rule or combination of rules of the Clerks' Agreement, call for the triple payment and the double penalty which the Employees are here seeking to exact from the Carrier. The claim is entirely without merit and should be denied.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: On May 13, 1951, the Carrier served a formal written notice upon Chief Ticket Clerk Clyde E. Russell to the following effect:

"Effective Wednesday, May 16, you will devote two and one-half hours of your five day week in making daily cash balances and arranging daily bank deposits, your hours will remain as of now."

The Employees contend that this instruction requires the Carrier to compensate Clerk Russell for two and one-half hours at the rate of \$425.00 per month, the rate of the Ticket Agent, for each day that he is required to perform duties of the Ticket Agent. In this respect, Rule 55 of the applicable Agreement provides:

"Employees temporarily or permanently assigned to higher-rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower-rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether he

the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher-rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

That Rule 55 applies to the instant situation seems only too clear from the Carrier's own statement:

"In order to give the Agent (occupying an excepted position) the needed additional time in which to exercise necessary supervisory duties, the incumbent of the Chief Ticket Clerk position (a schedule position) was instructed in writing on May 13, 1951, that effective on May 16, 1951, he would be required to devote two and one-half hours on each day * * * of his five-day week to assisting in making daily cash balance and arranging daily bank deposit. This work, which theretofore had always been performed by the Agent in its entirety, was not entirely relinquished by the Agent and was not taken over in its entirety by the Chief Ticket Clerk."

Moreover, it is obvious from the written instruction given Clerk Russell and from the just-quoted statement of the Carrier that the one exception stated in Rule 55 does not apply since in this case there was no "temporary increase in the volume of work". Indeed, in regard to the Employees' contention that the assignment "was not due to a temporary increase in volume of work", the Carrier answered that it "has never contended otherwise".

That it is not necessary for the employee to fulfill and perform **all** of the duties and responsibilities of the higher rated position is made clear in Award 4545. Also, the fact that the Agent's position is excepted from the applicable Agreement in no way affects the application of Rule 55 insofar as the Chief Ticket Clerk position is concerned. See Award 3444 and Awards cited therein.

The Board finds no merit in the Employees' contention that Clerk Russell was required by the May 13, 1951, instruction in effect to suspend work on his own position to absorb overtime in violation of Rule 45. The record amply supports the conclusion that had the Carrier not made the May 13, 1951, assignment, there probably still would have been no necessity for overtime work and probably none would have been performed. The nature of the work in question is such as to militate against its performance as overtime, and even if this were not so the Carrier has shown that there is a sufficient ticket office force to handle the work without working overtime. The Employees in this case seem to be in the inconsistent position of contending that the assignment of the higher-rated work to Clerk Russell was proper under Rule 55 and requires compensation under that Rule, and at the same time of contending, without offering evidence showing that the work would otherwise have had to be performed on an overtime basis, that the very same assignment was a violation of Rule 45. This Board does not believe that the negotiators of these rules intended that each assignment covered by Rule 55, as that in the instant case clearly is, should create a presumption of violation of Rule 45.

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 violated the Agreement as indicated in Opinion.

AWARD

Claim (a) denied. Claim (b) sustained, less what has been paid for the hours involved therein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.