

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

J. Glenn Donaldson, 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 RY. 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 violated the Clerks' Agreement at Kingsville, Texas on September 2 and 3, 1952, when it required from three to ten employees in the Auditor's office to suspend their normal and regularly assigned duties in order to compile a special statement for which there was a deadline of September 3, 1952 for completion. Also
- (b) Claim that each employee involved be paid additionally at the straight time rate for each hour they were withheld from their regularly assigned position and work.

EMPLOYES' STATEMENT OF FACTS: Sometime in August 1952 the Chief Traffic Officer at St. Louis, Missouri, requested the Auditor's office at Kingsville, Texas to prepare a statement showing, by months, the number of cars, tons and revenue of petroleum and petroleum products, commodity classifications Nos. 337, 339, 501, 503, 505 and 507 for a five and one-half year period--January 1, 1947 through June 30, 1952.

which requires that work once assigned on an overtime basis may not be assigned at straight time rates. Where the Carrier can get the work done at straight time rates without violating a provision of the agreement it is within its province to do so."

As has previously been stated, we know of no provision in the governing agreement that arbitrarily requires the Carrier to have all or any part of "special" work performed outside of the regularly assigned working hours of any office or department.

While we recognize that the claim in the instant case is not for payment at the overtime (time and one-half) rate, but at the straight time rate due to the fact that no service was actually performed for the compensation claimed, and under which circumstances your Board has denied claims for payment at the overtime rate, it nevertheless is a claim for additional payments, part of which is for a full day's pay of eight hours, part of it for seven hours, and on one date for four hours, for which no equivalent service was performed.

This is just another of many unreasonable claims that have been presented from time to time, some of which have been paid by tribunals of adjudication resulting in the payment of thousands of dollars by the Carriers for no commensurate service performed. This obviously unfair and dangerous policy with its ultimately far-reaching effect morally and economically justifies the most thoughtful and serious consideration by labor, management and boards of adjudication. It is likewise a situation important to the shipping and traveling public who eventually pay the bills resulting from highly increased railroad operating costs due in part to unreasonable and unjustified penalty payments to employees. A correction is justified in the interest of labor itself. Obviously such a trend which is so injurious and contrary to the interests of all concerned not only threatens its own defeat, but must inevitably operate detrimentally on those who originate and long sustain it. The correction is needed in the interest of collective bargaining, the success of which is essential to economic peace and security. The instant claim being so obviously contrary to any fair standards of conduct should therefore be denied.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The ten employees involved in this dispute are employed in the office of the Auditor of Freight and Passenger Accounts at Kingsville, Texas.

On Thursday, August 28, 1952, the said Auditor's office received a telephonic request to prepare and complete, not later than the evening of Wednesday following, certain data to be used as an exhibit in a rate case before the I.C.C. The special data involved showing by months the number of cars, tons and revenue relating to petroleum and petroleum products for a four and one-half year period ending June 30, 1952. Two clerks were placed upon the project Thursday, working overtime on that day and the following. Eight hours were worked at overtime rate by these two employees on each of their ordinary rest days, Saturday and Sunday. Monday, Labor Day, was not worked but the statistical clerks worked overtime Tuesday and Wednesday, for total overtime by one clerk of 28 hours and 26 hours for the other.

The comptometer operators, six in number, and two stenographers were required to drop their routine work on Tuesday and Wednesday and assist the two clerks with the special report which was completed on time. It is for these two days that claims are made.

The question, states the Employees, is whether or not the Carrier can properly withhold an employee from his assigned position and work in order to avoid overtime in the compiling of a special statement.

Rule 44, ABSORBING OVERTIME, reads:

"Employees will not be required or permitted to suspend work during regular hours to absorb overtime."

As previously noted, all Claimants are employed in the office of the Auditor of Freight and Passenger Accounts at Kingsville. The dates of the alleged rule violation were September 2 and 3, 1952. The Carrier attaches as Exhibit A-1 to A-10, bulletins advertising new positions or vacancies. Certain of these exhibits cannot be considered because effective after the dates of claims and there is no showing the position duties were the same on dates of claim. See Carrier's Exhibits A-2, 4, 5, 6, 7 and 8. An examination of the qualified exhibits shows the following in their pertinent aspects:

Exhibit A-1 Division of Accounting; Seniority District No. 3; Kingsville, Texas; Stenographic No. 662; Brief Description of Duties—"Govt. Bills, Special Statements, typing monthly commodity statistics and other stenographic work including dictation."

Exhibit A-3 Seniority District No. 3; Kingsville, Texas; Comptometer Opr. No. 665; Brief Description of Duties—"All Comptometer Work."

Exhibit A-10 Div. Accounting; Seniority District No. 3; Kingsville, Texas; Clerk Frt. Int.; Brief Description of Duties—"Handling clearing house and all duties in connection therewith, making received and forwarded freight entries."

Exhibit A-10 Div. Accounting; Seniority District No. 3; Kingsville, Texas; Machine Operator No. 649; Brief Description of Duties—"Operating Reproducer and Printer, applying mileages, preparation of I.C.C. Statistics, balancing of System Lines accounts, Agents and Conductors accounts and clearing house balances."

It is the last two positions which have heretofore been referred to as Statistical Clerks or Clerks.

In Award No. 4646 we stated:

"The intent and purpose of the Seniority and Bulletining Rules is to protect the Employees' rights to the respective positions they had secured, and not to require them to suspend their regular work to absorb overtime, which either they or other regular employees would have earned had such suspension not taken place. This Board has so held in many awards (citations). And the same principle applies, even if the hours worked are the same as the hours of the employees' regular assignment. * * *"

In Award No. 4672, we were concerned with the same Rule 44, ABSORBING OVERTIME, at the same office at Kingsville. There a special exhibit was requested by the Carrier's attorneys for use in pending litigation. Three months' time rather than six or seven days, as here, was available for its completion. Claimant, a rate clerk, was used upon the special project for twenty-five days during which time the work of his regular position was left undone. In said Award, this Division, assisted by a referee, ruled that "the duties of claimant's position were not limited to his routine work alone. They were as broad as the bulletined description of duties, and the Carrier could rightfully direct the order of performance of such duties and the omission of any of them not deemed essential, but, under Rule 44, the Carrier could not rightfully direct an employee, during his regular hours of work, to suspend the assigned duties of his position, and perform work outside such duties for the purpose of preventing or limiting overtime." We sustained the claim in the cited Award after determining that the duties bulletined to the positions bid in and occupied by Claimant were foreign to the duties specially assigned and upon which claim was based. There, "The matter

involved in litigation and sought to be shown by the exhibits was not, primarily, concerned with rates, either as to the amount of the rates, or the corrections or revision of the rates, but rather, it was concerned with the proper method of division of the revenue between the connecting Carriers." which was work, we held, regularly assigned to the interline department. It was the similar work of pulling out of the records, data concerning the movements of a particular commodity which is before us here.

We reaffirm the method of approach used in Award 4672, and proceed to analyze the within claim upon the basis thereof to the extent that the facts appearing of record permit.

In order to obtain the information desired for incorporation in the report the Carrier states that it was necessary to break down the six petroleum commodity classifications as follows:

(a) Local traffic.

(b) Originated, destined to a foreign line.

(c) Delivered, traffic received from a foreign line.

(d) Intermediate or overhead traffic, which is traffic having an origin and destination on foreign lines on which we perform intermediate service. The Carrier further states: "It was, of course, necessary that the foregoing data be obtained by the Statistical Clerks from the Carrier's statistical records, which are compiled and maintained in the office in which Claimants are employed, following which the calculations had to be verified by comptometer operators, and the statements were then typed by stenographers."

It would appear from position descriptions relating to two Clerks who performed the bulk of the report work, they were doing nothing foreign to their usual assignments while so engaged. True, the report assignment required the gathering of the data from punch cards and assembling the same on IBM printing machines. What we gather from the record submitted is that these same employees daily take off the basic data from station waybills and it progresses through Exhibit Forms R-1 and R-2 and eventually to the punch cards. The difference in work is one of quantity rather than of kind or character and unobjectionable. The fact that the daily work of these employees was not done during the period of getting out the report is not important once it be determined, as here, that the special work is within the scope of the position. No rule has deprived Management of discretion to plan and apportion work that properly is within an employee's assignment and our Awards do not condemn under such circumstances. What our Awards have condemned is the practice of taking an employee from his position to do work of another assignment in face of an absorption of overtime rule. See Awards 3416, 3417, and 3418 arising upon the lines of this Carrier.

The data required in the instant case was not unlike that needed in Award 4672—both covered the actual movement of the involved freight over lines of various Carriers and required breakdown of the division of revenue that had been made as between Carriers, work which we found in the earlier Award to be work of the interline department and it would appear to be the work of that division of the office in the instant case. We refer to position descriptions, quoted above, for these two positions and reiterate that they were properly working within assignment while performing the special report and the claims must be denied as to them.

The position description in evidence relating to Stenographic Position No. 662, presumably one of the positions worked upon this project, reads: "Government Bills, Special Statements, typing monthly commodity statistics and other stenographic work including dictation." As we ruled upon this property in Award 4646, "the duties of claimant's position were not limited to his routine work alone. They were as broad as the bulletined description

of duties, and the Carrier could rightfully direct the order of performance and the omission of any of them not deemed essential * * *." The work done was a special statement and involved the typing of data which concerned commodity statistics all within the position description. The fact that the statistics covered a four and one-half year period rather than a month is immaterial. The occupant of this position, we find, was engaged in work within the scope of his or her position and the claim asserted to be without merit.

The only other position description made available to us which pertains to the time in question is that of Comp. Opr. No. 665. The duties of the position are described as "All Comptometer Work." Again the duties of the occupant of this position were as broad as the bulletined description of duties.

When the employe bid for the position she was fully aware that it included "All Comptometer Work" within Seniority District No. 3, Kingsville, hence no injustice was done to assign her to the work in question which she contracted to perform in line with the bulletin and assignment.

As to the other positions, the claims asserted must be denied for failure to establish the scope of the work of the regularly assigned position upon which findings can be made.

There was no showing here that stenographers and comptometer operators occupied bulletined positions in the interline department and were denied the opportunity of doing the work in question. Further if the entire staff of the interline department had been used upon the project it would be speculative to assume that they were sufficiently skilled in the operation of comptometers and typewriters to perform the work required in producing the completed report.

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 Agreement was not violated by the assignments complained of.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1954.