

Award No. 6830

Docket No. CL-6781

**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 BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, that Oscar Glover, Material Distributor, Section J, Cumberland Reclamation Plant, shall be paid at the Section Stockman's rate of pay for all time spent in taking stock on July 24, 1950, and each and every day thereafter on which he performed such service.

**EMPLOYEES' STATEMENT OF FACTS:** On July 24, 1950, and subsequent dates Oscar Glover was requested by Carrier to perform the duties of Section Stockman and was paid only at the Material Distributor's rate. The duties of Section Stockman he performed consisted of checking stock and taking inventory. The rate of pay of Material Distributor was \$1.349 per hour. The rate of pay of Storehelper was \$1.349 per hour. The rate of pay of Section Stockman was \$11.35 per day.

**CARRIER'S STATEMENT OF FACTS:** On July 24, 1950, Mr. Oscar Glover was regularly assigned as Store Helper at the Cumberland Reclamation Plant. On that date he filled the position of the regular Material Distributor on the first shift in the storehouse. On that date, as part of the duties of the Material Distributor's position, he was required to walk around the storehouse and material yard with a stockbook, counting the stock and inserting the figures in the stockbook. While the claim is for "subsequent dates" there is no showing that the claimant was required to do this on other than the one date, July 24, 1950. For that date he filed a time slip claiming 4 hours at the Section Stockman's rate of pay.

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This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

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**POSITION OF EMPLOYEES:** Effective March 1, 1947, a new Agreement covering working conditions was signed by both representatives of the Carrier

beginning for the calculations done by the section stockman as to the needs of the section and what must be ordered for replenishment.

The only occasion the Material Distributor has to handle the stockbook is to put down the number of each item he has counted in his travels around the bins in the storehouse. On any particular day, in so doing, the Material Distributor devotes but a comparatively short part of his time, certainly an amount of time considerably less than four hours per day.

The claim arises under an asserted application of Rule 15 of the Clerks' Agreement effective March 1, 1947. That rule reads:

"(a) Except as provided in Rule 23(d), employees temporarily assigned to higher rated positions, shall receive the higher rates for four (4) hours' work or less, and if held on such positions in excess of four (4) hours, a minimum of eight (8) hours at the higher rate. Employees 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 occupied, whether the regular occupant of the position is absent or whether 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."

The rule contains its own self-specified definition. It states that a "temporary assignment" will "contemplate (s) the fulfillment of the duties and responsibilities of the position during the time occupied, \* \* \*".

To hold that the claimant, working as a Material Distributor, was required to "fulfill" the duties and responsibilities of a Section Stockman would be to distort the known and identifiable factual record. He had none of these.

When the claimant filled the position of Material Distributor, he was told to do what the Material Distributor had always done; i.e., to work about the bins counting the items on hand. It is scarcely consonant with reason to hold that in so doing he was acting as a Section Stockman or that he was "temporarily assigned" to this higher rated position.

The claim is not valid and should be denied.

**OPINION OF BOARD:** This case is before the Board on a Joint Submission of Facts. The record discloses that the Claimant, Glover, was regularly assigned to Store Helper in the Carrier's Cumberland Reclamation Plant which is divided into five separate sections, each in charge of a different section stockman, a Group 1 position rated at \$11.35 per day. Group 3 positions of Store Helpers and Material Distributors, both rated at \$13.49 per hour, were also maintained in each section.

On July 24, 1950, Claimant occupied a position of Material Distributor in Section "J". On that day he was required to perform work by walking around the storehouse and material yard with a stock book and inserting figures in the stock book. The Employees assert he was taking stock, and the figures he placed in the stock book were placed in a permanent record of the Carrier, apparently to be referred to in the event information was desired.

It is the Employees' contention that when the Store Helper or Material Distributor takes inventory by himself in the absence of the Section Stockman, such employee or employees performs the work of the higher-rated position which is that of Section Stockman, and is entitled to the rate of pay of the

higher position on a four or eight-hour basis, within the contemplation of Rule 15 of the Agreement between the parties bearing effective date of March 1, 1947.

Rule 15—Preservation of Rates, reads:

"(a) Except as provided in Rule 23(d), employees temporarily assigned to higher rated positions, shall receive the higher rates for four (4) hours' work or less, and if held on such positions in excess of four (4) hours, a minimum of eight (8) hours at the higher rate. Employees 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 occupied, whether the regular occupant of the position is absent or whether 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."

The Carrier's contention is that the work involved is not clerical work, and it has always been a part of the duties of the Store Helpers, Material Distributors, and Section Stockmen.

The Employees state that the above statement is incorrect; that "Section J" in the Cumberland Reclamation Plant is the only section where Material Distributor or Store Helper positions were required to perform the duties of taking stock or inventories, this work being performed by the Section Stockman in the other sections of the plant.

The Carrier details the duties of Section Stockman, Group 1, as follows: The section stockman is in charge of supplies; among other duties and responsibilities, he is required to make a general accounting of supplies for requisitioning purposes. The Section Stockman determines what his needs are and ascertains what he must secure to replenish his stock. He must prepare his average monthly consumption figure on each item. This requires calculation and, more precisely, it demands a knowledge of the needs of his section, what demands may be expected on a particular item or items, what his surplus is, what is due, what he owns, etc. It demands study, and upon this foundation the Section Stockman proceeds to formulate his requisition. All these functions rest upon the Section Stockman; they are essentially clerical in nature. None of these functions or responsibilities falls to the Material Distributor.

The Carrier states that the items in the storehouse are generally bulky and they are stored in bins. Periodically (about once every sixty days) and according to the needs of the particular section, a check is made of the stock contained in the bins. Then the Material Distributor goes to each of his bins and counts the number of items on hand. Each section maintains a stock book, and the Material Distributor jots down the number of items on hand in each bin, and this is all he is required to do.

The Employees make reference to Scope Rule 1 of the Agreement.

"Group 1. Clerks as defined in the following paragraph, and all other employees and positions classified in Group 1 on March 1, 1947.

"Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of office mechanical equip-

ment and devices in connection with such duties and work shall be designated as clerks.

"The above definition of clerk, shall not be construed to apply to employes engaged in assorting tickets, waybills, etc., nor to employes operating appliances or machines for perforating, addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders, and work of a like nature, nor to employes gathering or delivering mail such as office boys, messengers and chore boys; nor to employes performing manual work not requiring clerical ability.

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"Group 3. Laborers employed in and around stations, warehouses, freight houses, store houses, including callers, stowmen, truckers, sealers, coopers, store helpers, lumbermen, scrap assorters, chauffeurs, tractor operators, motor car operators, and all other employes and positions classified in Group 3 on March 1, 1947."

In consideration of the facts and Scope Rule 1 as applied thereto, the Employes assert that it is evident that the involved work was assigned to Clerks, Group 1 employes, embracing Section Stockman positions, and not laborers, Group 3 employes, embracing Store Helpers and Material Distributor positions, as reflected by the distinction between the two classifications of Group 1 and Group 3.

The Carrier states that the Material Distributor devotes but a comparatively short part of his time, considerably less than four hours a day, when he is required to perform such work. In the instant case the Carrier's Manager, Labor Relations, in a letter to the Brotherhood General Chairman, dated April 21, 1953, said in part:

"The facts in this case are that Mr. Oscar Glover was regularly assigned as store helper. On July 24, 1950, he worked in place of regular Material Distributor on the first shift and on this date was required to spend about four hours taking stock."

The Carrier places reliance on Award 2028 of this Board, contending that it is in point under the factual situation presented here. The Carrier asserts the Clerks' Committee argued in that case in substance as follows: The duties of a laborer are the performance of manual labor only. The counting, weighing, measuring, and recording of material is not laborer's work. The duties of the store helper are just as the title indicates, helping the stock clerk, or store helper. In the cited Award this Board ruled a laborer could do this kind of work.

We believe an analysis of the facts in Award 2028 is in order. It appears from the Opinion in that case that:

"During a period of about ten days in September, 1941 the Carrier took its annual inventory at Kingsville, Texas, and during the taking of this inventory laborers were used, in some instances to count, weigh, measure and make notations as to materials on hand. It is contended here that this work performed by laborers was properly that of a store helper and that the work should be paid for at store helper's rate. It is said that store helpers perform all of this kind of work in the Store Department during the entire year with the exception of the ten day period when the annual inventory is taken.

"It seems from the record that during this ten day annual inventory period it is necessary that materials on hand in and about

the storehouse in bins, containers, stock piles, etc. must be counted, weighed and measured, and that some kind of a tag or mark must be placed on or in each bin, container or pile properly designating the quantity, weight or measurement involved. The record is silent as to whether or not store helpers were used with the laborers in performing this work. The record is clear however that the laborers did nothing more than their usual work except to make some notation of their counts, weights and measurements. **The record also shows that in the making of the inventory the laborers did not call off the materials for the purpose of recording, but that work was performed by store helpers calling off the notations to the stock clerk who made the permanent records in the stock book.**" (Emphasis ours.)

We believe in the light of the foregoing, that the distinction between Award 2028 and the facts in the instant case is obvious.

The Carrier infers that Rule 15 required the Claimant to fulfill all the duties and responsibilities of the higher rated position. We are not in accord with the Carrier in this respect, and believe Award 4545, dealing with a rule similar to Rule 15, answers the Carrier on this point:

"The question therefore arises, does Rule 34 contemplate and require an employe to fill and perform all the duties and responsibilities of the higher rated position before being entitled to the rate thereof?

"It will be observed that under the rule there may be an assignment irrespective of the presence of the regular employe. This clearly indicates that the rule does not contemplate that the employe as assigned must necessarily fulfill and perform all the duties and responsibilities of the higher rated position. We think the rule means that when an employe is assigned to and devotes his time to the performance of duties and responsibilities of a higher rated position he is entitled to the rate thereof, although he may not necessarily perform all the duties and responsibilities thereof." See, also, Awards 2270, 4669.

We believe that under the facts in the instant case the Claimant was performing clerical work. He was recording the quantity of each item of stock on hand in the stock book, a permanent record containing information that might by necessity be referred to in the future. He was, in fact, taking inventory.

For the reasons herein stated, the claim should be sustained.

With reference to requiring a joint check of Carrier's records by the parties, as to violation of the Agreement as here contended for, we hold such request is unnecessary under the facts adduced by the record.

**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 Carrier has violated the Agreement as provided for in the Opinion.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1954.