

Award No. 6966
Docket No. CL-7063

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

FORT WORTH AND DENVER RAILWAY COMPANY

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

1. That Carrier violated and continues to violate the present working agreement in office of Auditor of Revenues at Fort Worth, Texas, when it required Clerks G. B. Mattison, T. F. Avriett and H. E. Duke to suspend work on their regular assigned positions and work positions of Miscellaneous Division Clerk, known as Desk No. 3;
2. (a) That Mr. G. B. Mattison, in addition to the pay already received, be paid for four (4) hours on September 8, eight (8) hours on September 9, eight (8) hours on September 10, four (4) hours on September 11, and four (4) hours on September 18, 1953, at the rate of \$16.10 per day, covering time he was withheld from his assigned position and required to work the No. 3 Desk;
(b) That Mr. T. F. Avriett, in addition to the pay already received, be paid for four (4) hours on September 18, 1953, at the rate of \$15.95 per day, covering time he was withheld from his assigned position and required to work the No. 3 Desk;
(c) That Mr. H. E. Duke, in addition to the pay already received, be paid for four (4) hours on September 18, 1953, at the rate of \$15.95 per day covering time he was withheld from his assigned position and required to work the No. 3 Desk;
3. That the three above-named claimants (Mattison, Avriett and Duke) be paid additionally for all work performed on Desk No. 3 on subsequent dates at their regular rates of pay, until violation is corrected.
4. That Mr. Ralph Joel, Miscellaneous Division Clerk, be paid at the rate of time and one-half for the number of hours worked (by the three claimants above-mentioned) which represents overtime he would have earned had the Carrier not assigned

Clerks Mattison, Avriett and Duke to his position, known as Desk No. 3.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. B. Mattison was assigned to position of "Division Clerk" by bulletin, July 26, 1951, with certain duties attached (Employees' Exhibits "A-1" and "A-2").

Mr. H. E. Duke was assigned to position of "Recheck Division Clerk" August 3, 1953, with certain duties attached (Employees' Exhibits "A-3" and "A-4").

Mr. T. F. Avriett was assigned to position of "Recheck Division Clerk" in 1930 (Bulletin not available) with identical duties as those attached to Mr. Duke's position.

Mr. Ralph Joel was assigned to position of "Division Clerk" (position known as Miscellaneous Division Clerk, Desk No. 3, and formerly occupied by Mr. Duke) on August 11, 1953, with certain duties attached (Employees' Exhibits "A-5" and "A-6").

During the month of September 1953, employees Mattison, Avriett and Duke were instructed to leave their regular assigned positions and perform work on Desk No. 3, and the records show that the three claimants actually performed work from Desk No. 3 ranging from 4 to 8 hours per day each, as outlined in the claim, and have continued to perform such work on subsequent dates.

Formal claim was registered with the General Auditor on October 12, 1953 (see Employees' Exhibit "B"), confirming discussion with him about this matter on September 25, 1953.

Claim declined by Mr. Nottingham, General Auditor, October 26, 1953. (See Employees' Exhibit "C".)

Claim subsequently appealed to Mr. C. W. Ruffner, Assistant to General Manager, October 30, 1953 (Employees' Exhibit "D".) Management replied November 16, 1953, docketing the case for discussion (Employees' Exhibit "E").

Case discussed with Mr. Ruffner in conference December 17, 1953. Claim declined (Employees' Exhibit "F").

Written instructions issued by management, Mr. H. A. Crittendon, Auditor of Revenue, on December 9, 1953, directing that Clerks Mattison, Avriett and Duke suspend their regular assigned duties and perform work from Desk No. 3 to be completed within a period of 30 days. (Employees' Exhibit "G".)

POSITION OF EMPLOYEES: The management violated rules of our agreement with Carrier effective September 1, 1947 and as subsequently amended, that governs the hours of service and working conditions of employees involved in this dispute.

Copies of these agreements have heretofore been filed with your Honorable Board and by this reference thereto are made a part hereof.

The fundamental facts in this case are not in dispute. It cannot be denied that Clerks Mattison, Avriett and Duke were assigned to certain positions by bulletin, with certain duties attached and then instructed by management both verbally and by written notice to suspend work on their regular positions and perform work on Desk No. 3 position presently occupied by Mr. Ralph Joel.

3. The work of the four claimants herein is so closely inter-related that it cannot be said that Joel had an exclusive right to perform the work in question.

In view of the above, the Carrier respectfully requests that this claim be denied in its entirety.

The Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The four positions involved are in the office of the Auditor of Revenue. There are nine Division Clerks in this office all performing work relating to the division of revenue from freight shipments. The preponderating duties are set out in the record.

It is contended by Petitioners that Claimants were required, on the dates involved, to suspend work on their regular assignment and perform work of the Joel assignment. Cited is Rule 46:

"Absorbing Overtime. Employees will not be required to suspend work during regular hours to absorb overtime."

and numerous other awards of this Division.

Respondent Carrier states that no regular employe was required to discontinue work on his regular position to fill a vacancy on another position as there were no vacancies and all positions worked on the dates in question. Citing Award 5331. Also cited are bulletins setting up the involved positions and all work was of the same type and nature. Citing Awards 5601, 6023, 6393 and 6711.

An examination of the work performed leads to the conclusion that there was no overtime worked and the work done comes within the preponderating duties of the positions worked. We view the positions taken by Petitioners to be technical in its application to the facts here presented.

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 there was no violation of the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of April, 1955.