

Award No. 7075
Docket No. CL-6886

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks Agreement.

1. When it failed and refused and continued to refuse to compensate claimants at the higher rate account their being required and directed by Carrier supervision to perform and complete the performance of higher rated duties and work constituting the fulfillment of the duties and responsibilities of higher rated position on the claim dates specified in Claim Statement attached hereto and made a part hereof, and upon each day subsequently required to perform and complete the performance of said higher rated work, which Carrier refusal is in violation of Rule 31 of the Clerks' Agreement;
2. Clerks H. L. Priddy and L. W. Fee shall be compensated for the difference in rate of position of Claim Investigator, \$14.30 per day as of October 1, 1952 and \$14.54 per day as of January 1, 1953, and that of Assistant Salvage Clerk, \$14.96 per day as of October 1, 1952 and \$15.20 per day as of January 1, 1953, had that position been restored and operative during the period since the beginning of the claims here involved on Tuesday, November 18, 1952, or 66c per day for each claim date, to continue until the dispute is disposed of and the claim satisfied.
3. Any other occupant of the Claim Investigator positions who were required to go to the Salvage room in the Warehouse and perform the higher rated duties here involved shall also be compensated for the difference in their rate and that of Assistant Salvage Clerk position, or 66c per day for each day so engaged.

CLAIM STATEMENT

Claims of Clerk H. L. Priddy

Tuesday, November 18, 1952.....	\$.66
Wednesday, November 19, 1952.....	.66
Tuesday, December 2, 1952.....	.66
Tuesday, December 16, 1952.....	.66
Wednesday, December 17, 1952.....	.66

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Tuesday, December 30, 1952.....	.66
Tuesday, January 13, 1953.....	.66
Wednesday, January 14, 1953.....	.66
Tuesday, January 27, 1953.....	.66
Tuesday, February 10, 1953.....	.66
Wednesday, February 11, 1953.....	.66
Tuesday, February 24, 1953.....	.66
Amount.....	<u>\$7.92</u>

Claims of L. W. Fee

Tuesday, November 18, 1952.....	\$.66
Tuesday, December 2, 1952.....	.66
Tuesday, December 16, 1952.....	.66
Wednesday, December 17, 1952.....	.66
Tuesday, December 30, 1952.....	.66
Tuesday, January 13, 1953.....	.66
Tuesday, January 27, 1953.....	.66
Tuesday, February 10, 1953.....	.66
Tuesday, February 24, 1953.....	.66
Amount.....	<u>\$5.94</u>

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains at its Kansas City, Missouri Local Freight Station, located upon the second floor of the building in the Agent's office, a clerical position classified as Salvage Claim Clerk, assigned hours 8 A. M.-4:45 P. M., exclusive of meal period, Monday through Friday, that is listed and rated subject to the provisions of the Clerks' Agreement, which as of October 1, 1952 was rated \$15.44 per day, and the primary and essential duties of the position are:

Handling and selling all salvage freight,
 Making reports on same,
 Working claims and other related duties,

which duties were so stipulated by the Carrier in its Vacancy Bulletin No. 156 dated October 27, 1949, here made a part of the record, when the position was restored following the end of the Train and Engine Service strike on the Missouri Pacific Railroad:

"Local Office

Vacancy Bulletin No. 156

Kansas City, Missouri
 File: B-871-49
 Date: Oct. 27, 1949

TO ALL CONCERNED:

The following position is open for bid:

TITLE	Salvage Claim Clerk—Position No. 42.
LOCATION	Local Office—KCMo.
HOURS	8 A. M. to 4:45 P. M.—Monday thru Friday.

shows that they are of a routine nature which can be performed by any competent clerk. The exercise of discretion such as determining if the bids are sufficiently high and the responsibility for the operation of the department remains with the Salvage Claim Clerk.

Since the position of Assistant Salvage Claim Clerk does not exist, the claimants obviously could not have assumed the duties and responsibilities of such a position. They were not assuming such duties as were assigned to the Assistant Salvage Claim Clerk when such position did exist because those duties involved a great deal more than the work here in question.

Therefore, it is clear these claimants were not assuming the duties and responsibilities of the Salvage Claim Clerk nor those of a non-existent Assistant Salvage Claim Clerk. It is equally clear that the propriety of the efficient and practical use made of the employees involved in this claim is recognized in the last sentence in Rule 31(c). Claimants were assisting a higher rated employee due to a temporary increase in the volume of work. Employees so used do not merit any increase in compensation and are not entitled thereto under the agreement. There is no authority for the payment claimed.

This claim is without merit and is not supported by the rules and therefore must be denied. In addition, paragraph 3 of the claim is so vague and indefinite that no consideration can be given to that portion of the claim.

OPINION OF BOARD: Claimants are occupants of positions in the Local Freight Office classified as Claim Investigators which were rated \$14.30 per day effective October 1, 1952, and \$14.22 per day effective January 1, 1953. There is also a clerical position in this office designated as Salvage Claim Clerk occupied by one E. K. Ferguson which is rated \$1.14 per day higher than the Claim Investigator positions. On certain dates shown in the record Claimants first contended they were used to do the work of the Salvage Claim Clerk and demanded the higher rated pay for its performance. Subsequently they amended their claim to show that they performed the work of an Assistant Salvage Clerk, or Assistant Salvage and Claim Investigator, which involved a differential in pay of 66c per day over that of a Claim Investigator. The claim is now for 66c for each day that Claimants were used in the Salvage Department.

The record shows that on Tuesdays and Wednesdays in alternate weeks, Carrier held a salvage sale under the direction and responsibility of the Salvage Claim Clerk. On these days Carrier used the Claimants to perform certain clerical work connected with these sales. The submissions of the parties are exceedingly long and in considerable conflict as to whether or not Claimants were used as Salvage Claim Clerks, Assistant Salvage Clerks or Assistant Salvage and Claim Investigators, which latter two classifications had existed in 1948 and 1949.

We make the following findings with reference to the evidence in the record. Claimants were not assigned as Salvage Claim Clerks. Nor were they assigned as Assistant Salvage Clerks or Assistant Salvage and Claim Investigators, those positions not being in existence during the period of the alleged violations. Claimants were used to help out the Salvage Claim Clerk on days that salvage sales were held. The question is whether or not the applicable rule requires the Carrier to pay a higher rate for this service and if so, the amount thereof. The controlling rule provides in part as follows:

"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

the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe, due to a temporary increase in the volume of work, does not constitute a temporary assignment." Rule 31(c), Current Agreement.

We necessarily conclude the Claimants were not temporarily or permanently assigned to higher rated positions. The work they were performing in the Salvage Department was due to temporary increases in volume, although there was some degree of regularity connected with it. They were clearly assisting the Salvage Claim Clerk on days he was in charge of salvage sales. The work performed by Claimants falls within the last sentence of the quoted rule which states that "Assisting a higher rated employe, due to a temporary increase in the volume of work, does not constitute a temporary assignment."

The claimants in this case were used to perform extra work resulting from the holding of salvage sales. The latter were held with some degree of regularity, it is true, for the reason that damaged goods are always in the Carrier's possession in varying amounts. The assistance required by the Salvage Claim Clerk is dependent upon this variance. It is not such that warrants the establishment of a new position. In performing the work, Claimants do not devote their time to the performance of duties and responsibilities that constitute the yardstick for rating the position of the Salvage Claim Clerk. The work performed was strictly clerical, the Salvage Claim Clerk making all the decisions and assuming all the responsibility. Under these circumstances Claimants were Clerical Assistants as contemplated by the last sentence of Rule 31(c), and they are not the recipients of temporary assignments within the meaning of Rule 31(c).

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1955.