

Award No. 7167
Docket No. CL-7142

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**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, on the dates shown below, it required named Account Clerks to suspend work on their regular assignments and perform work regularly assigned to Waybill Assorters for the purpose or having the effect of absorbing overtime.

F. S. Thompson:	April 28, 1953—6 hours, 15 minutes
	April 30, 1953—4 hours
T. U. Hayes:	April 28, 1953—6 hours, 15 minutes
	April 30, 1953—4 hours
J. C. Love:	April 30, 1953—4 hours

(b) Claimants Thompson, Hayes and Love shall be compensated at their respective pro rata rates of pay for the time so required to suspend work on their regularly assigned positions and absorb overtime, which under Agreement Rules, should have accrued to employees regularly assigned to positions of Waybill Assorter.

EMPLOYEES' STATEMENT OF FACTS: The Claimants, F. S. Thompson, T. U. Hayes and J. C. Love, were, on the dates claim arose, regularly assigned to positions styled "Account Clerk" (Group 1) in the Office of Auditor of Freight Accounts, Atlanta, Georgia. Each of the Claimants had previously been assigned to positions styled "Waybill Assorter" and held seniority in that group or class of service (Group 2).

On the dates shown in "Statement of Claim", the Claimants, being regularly assigned to and occupying positions as Clerks (Group 1) were required by the Carrier to suspend work on their regularly assigned positions and perform work regularly assigned to and performed by employees regularly assigned to positions designated as "Waybill Assorters" (Group 2).

Claimant Thompson has a seniority date in Group 2 of May 14, 1943. Her seniority date in Group 1 is January 11, 1944.

in situations where employees regularly devote not less than four hours per day to the writing and calculating incident to keeping reports and accounts, rendition of bills, reports and statements, handling of correspondence, and performance of similar work, or where employees regularly devote not less than four hours per day to operation of office or station mechanical equipment requiring special skill and training, such as typewriters, calculating machines, bookkeeping machines, etc., or perform a combination of these two duties, i.e., write and calculate incident to keeping records, accounts, etc., and operate office or station mechanical equipment requiring special skill and training. In many situations positions are established in Group 1 when employees perform clerical work, operate machines requiring special skill and, in addition, perform work which might otherwise be performed by employees falling within Groups 2, 3, 4 or 5. In such situations the higher rate is paid for performance of all work.

Positions are established in Group 2 and the other lower groups only in situations where there is sufficient volume of work to justify the establishment of such positions. In the Accounting Department, in Atlanta, there is sufficient work of sorting documents, such as waybills, abstracts, unit slips, freight bills, etc., to justify establishment of a number of Group 2 positions. Employees assigned in Group 2 perform the sorting work given them from day to day, but at the same time Group 2 employees perform the so-called assorting work, Group 1 employees also perform assorting work by assignment as such work is necessary to be performed by them.

The claim which the Brotherhood is here attempting to assert, not being supported by any provision of the effective clerical agreement, and being wholly without merit, should be denied and the Board should so hold.

All relevant facts and arguments involved in this dispute have heretofore been made known to Employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were regularly assigned "Account Clerks" (Group 1) in the office of Auditor of Freight Accounts, Atlanta, Georgia, on five day positions, Monday through Friday, 8:15 A. M. to 4:45 P. M. Each had previously held positions of "Waybill Assorter" (Group 2) and held seniority in that group. On April 28 and 30, 1953, claimants were required to assist Waybill Assorters where the work was unusually heavy. They were paid the higher rate of their Account Clerk positions while doing the lower rated Waybill Assorter work. Claimants contend that they were required to suspend work on their positions and absorb overtime on the Waybill Assorter positions. They demand additional compensation at the pro rata rate for the time they were used on the lower rated work.

On the days involved there were 51 Waybill Assorter positions and 407 Clerks assigned in the office. The work of the Waybill Assorters was running unusually heavy and all employees in the group were being used. The work of claimants was not running heavy and they were used to assist the Waybill Assorters for the hours stated in the claim.

The Carrier insists that Group 2 employees do not have the exclusive right to perform all Waybill Assorting work. Rule 1 classifies the employees under the agreement into groups and Rule 2 defines each group. Clerks are defined by Rule 2(a) as employees who regularly devote not less than 4 hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work. Rule 2 (c) defines Waybill Assorters as employees engaged in assorting waybills. It will be observed that while Rule 2 (a) does not specifically mention waybill assorting as an assigned duty of clerical workers, the rule does contemplate that they shall perform work other than that specifically assigned. If this were not so the rule would not contain the language "who regularly devote not less than four (4) hours per day" to the clerical work specified in the rule. Since all work within the scope of the

agreement is performed by the various classes of employees classified in Rule 1 and defined in Rule 2, it is clear that the agreement itself contemplates that a clerical worker doing 4 hours of work defined in Rule 2 (a) shall perform 4 hours of other work within the scope of the agreement. Under such a situation, the purpose of defining clerical workers in Rule 2 (a) is to identify the higher skilled employees for pay purposes and to preserve to that group the higher rated positions. It does not have the effect of giving them clerical work exclusively or of limiting them to the performance of that work only. Nor does the applicable rule purport to give Waybill Assorters the exclusive right to perform all of this lower rated work. It is true that seniority rosters are maintained in each group. As to Group 1 employees this is done in order to determine the order in which employees in this higher rated group may be cut off in force reduction and exercise any seniority rights they may have to the lower rated Group 2 positions. As to Group 2 employees the maintenance of a seniority roster serves to determine those in that group who are entitled to move up into the higher rated Group 1 positions when vacancies occur or additional positions are required in that group. We concur with the general views contended for by the Organization that employees on one seniority roster may not ordinarily be used to perform the work of positions whose occupants are on a different seniority roster. But when it is the clear intent of the agreement, as here, that higher rated employees on one roster may perform the lower rated work of employees on another roster, there is no violation of the agreement for them to do. Since Rule 2 (a) contemplates the use of clerical workers in lower rated work at their higher rate of pay, it cannot be said that their use in such work was for the purpose of absorbing overtime under Rule 30.

The foregoing conclusion is supported by the mutual interpretation placed upon the applicable rules by the parties over a long period of years. Carrier's Auditor of Freight Accounts states positively "that for years it has been our practice to utilize the services of Group 1 employees having knowledge of so-called accrual assorting to assist for short periods in assorting waybills incident to machine listings." The Organization's Local Division and Vice General Chairman, does not unequivocally deny the existence of the practice when he stated in his letter of September 22, 1954:

"The first I ever heard of Clerks being required to lay aside their assigned work and report to the head Clerk in charge of waybill assorting for work in that department was sometime in 1952. I mentioned this in conference with Mr. Noah Garner, Auditor of Freight Accounts, pointing out that, if such a practice did in fact exist, it was contrary to the Clerks' Agreement. * * *

We think the provisions of Rule 2 (a) indicate the correctness of the Carrier's position but, if there be some question about its meaning, it is one that could be resolved by the practice followed with reference to it over the years. The fact that Rule 2 (a) does not require a clerical worker to perform the defined work of the position for 8 hours per day, is of itself an indication that the practice over the years was in accord with the meaning of the rule as it is written.

There is still another reason why the claim must be denied. The evidence will not sustain a finding that any overtime was absorbed under Rule 30, which provides:

"Employees will not be required to suspend work during regular hours to absorb overtime, except as otherwise provided in Rule 26."

It is made clear from the record in this case that the original purpose of the absorbing overtime rule was to prohibit a carrier from suspending an employee during his regular assigned hours to equalize or absorb overtime which he had already earned. In more recent agreements it has been interpreted to have a broader scope, to-wit: That an employee may not be taken from his regular assignment and used on the work of another position where it would result in depriving the employee of the other position of over-

time which would otherwise accrue. For the purposes of this award we assume the correctness of the broader interpretation, but it cannot control the result here. This, for the reason that the record does not establish that the Waybill Assorters would have earned any overtime but for the use of claimants. The evidence shows that it was not necessary that the sorting of waybills be kept current. This work could and would have been held over and performed when it was reached. No situation existed that would have necessitated overtime under the facts disclosed. To have a valid claim, claimants must show by evidence beyond the realm of speculation and conjecture that Waybill Assorters were deprived of overtime which would have accrued except for the use of claimants. The evidence does not show that such was the case. Consequently, under the newer and broader interpretation of the absorbing overtime rule the claimants have failed to sustain their claim.

We necessarily conclude that the record fails to establish that claimants have a valid claim.

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 10th day of November, 1955.