Award No. 7228
Docket No. CL-7290

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on May 7, 10, 11, 12, 13, 14, 17 and 18, 1954, it removed the regularly assigned occupant of position in the Auditor Freight Receipts Office classified, listed and rated as "Personal Clerk," rate $17.55 per day, Mr. H. W. Buschkemper, from his regularly assigned position and the ordinary, normal and regular duties thereof, consisting of

> Special and general work,
> Analysis of Truck Revenue earnings
> Handling I.C.C. rate cases,
> Handling Traffic Investigations,

and utilized him to work in the Recheck Division as an addition to the regular established force therein, performing the regular and normal work of Recheck Clerks, that is,

> Rechecking divisions of the Great Northern
> Railroad November 1953 accounts and issuing
> correction accounts and statements of difference,

in violation of Rule 25 (f) and related rules of the Clerks' Agreement;

2. Regularly assigned Recheck Clerk E. F. Farr shall be compensated for 64 hours at the punitive rate of $3.10 per hour (or 8 eight-hour days) amount $198.40, account the Carrier's action in violation of the Agreement.

(Note: See Employes' Note, bottom of page 13, reference to claim for May 18, 1954.)

EMPLOYES' STATEMENT OF FACTS: The Auditor Freight Receipts Office is one office or unit of the Carrier's Accounting Department, located on the fifth and sixth floor of the General Office Building at St. Louis, Missouri. This office consists of several sub-divisions, such as Recheck Division,

uncommon nature or confined to a definite occasion. The work that is here in dispute is actually a portion of general work which fell within the area of a special investigation. Mr. Buschkemper was assigned to investigate possible recoverable revenues on some interline military traffic. The investigation led back to rechecking of inbound settlements. Mr. Buschkemper carried the investigation into the field of recheck and performed some of that work which is similar to the work normally performed by the claimant, but whether considered as special or general work or a combination of both, it is obvious the investigation of these settlements was wholly within the scope of his assigned duties.

Surely there can be no doubt about the right of the Carrier to assign to the Personal Clerk position any work with an equal or lower rate of pay in the same seniority district. That is all that was done in this case; Buschkemper was assigned a special investigation which took him into the realm of general work consisting of performance of work similar to that normally performed by other Clerks. It was all work of his own job assignment by reason of falling within the scope of one of the specific duty designations of his position.

As to the seniority, bulletin and assignment rules of the Agreement cited by the Employes we fail to see how there is any application of these rules to the case; certainly there was no violation of any of them. No seniority ratings were affected in any way. Bulletins were issued strictly in line with the Bulletin Rule and the work here involved was listed as one of the bulletined duties of the Personal Clerk position. All assignments in any way involved were made strictly in accordance with the rules.

As to Rule 27 (b) we think it is going entirely outside the bounds of this rule, and even outside the Agreement itself, to argue that the Carrier established a new position and reduced it below five days in weeks in which holidays did not occur. The clear facts are that there was no such additional position established. An argument of that kind would of itself knock the props out from under the Employes' case because it would preclude any possible application of Rule 25 (f). The facts are, however, that Personal Clerk Buschkemper merely performed duties of his own position on the claim dates and there was no violation of either rule.

Without prejudice to the position of the Carrier that there is no Agreement required or authority for the payment of this claim as fully outlined and supported supra, we desire to protest in any event the payment of any punitive rate because there is no justification or requirement for such rate of pay even when there is a violation of the Agreement involved.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute concerns a claim filed in behalf of E. F. Farr, regularly assigned Recheck Clerk, for additional compensation in the amount of $198.40, account of alleged violation of Rule 25 (f) when Respondent assigned H. W. Buschkemper, regularly assigned Personal Clerk, to perform duties in connection with rechecking accounts and issuing "correction accounts and statements of difference" on the dates in question.

Petitioners point out that the clerical work at the office in question had some eight sub-departments of which number one was Recheck and another Personal, with the Claimant one of 43 Recheck Clerks holding positions with bulletined duties covering the work in question. It was asserted the assignment of employe Buschkemper, regularly assigned Personal Clerk, to those duties ordinarily and customarily performed by Recheck Clerks had the effect of (1) Buschkemper being required to suspend work on the assigned hours of his position, resulting in (2) the absorbing of overtime work which would have otherwise accrued to the Claimant under a proper interpretation and application of Rule 25 (f), which reads as follows:

> "Employes will not be required to suspend work during regular hours to absorb overtime."

Respondent asserts that the recheck work in question was assigned to the Personal Clerk, Buschkemper, by the Auditor Freight Accounts, as part of the bulletined duties of the latter (Personal Clerk) position, such duties coming within the coverage of "special and general work" as contained therein as well as the past practice in assigning Personal Clerks to perform recheck duties. The Respondent contended that it was the custom to require of and assign to employes occupying higher rated positions the duties of lower rated positions; and that Rule 25 (f) was not violated since overtime was neither required of nor worked by the Personal Clerk in performing the questioned duties.

An examination of the bulletined duties of the position of Personal Clerk reveals that, in addition to the performance of other miscellaneous duties, the occupants of such positions must:

"* * * have same qualifications as required for recheck positions * * *."

Thus it must be concluded that the performance of rechecking functions was not work that belonged exclusively to Recheck Clerks, but was, in truth and in fact, work which was contemplated as being a part of the Personal Clerk's duties. However, this fact alone is not in itself necessarily sufficient justification for the performance, by employes of one classification, of duties which constitute to a great extent the sole duties of another classification, when determining whether or not rules such as 25 (f) have been violated.

An examination of the Awards of this Division concerning the absorption of overtime rule indicates that the ultimate decision in each was based upon the resolution of a question of fact. The criteria apparently applied was that no employe could be withheld from his regular assigned duties, and required to perform other duties, if the performance of such newly assigned duties had the result of depriving another employe, who otherwise might normally perform this work, of the opportunity of doing so on an overtime basis.

The record here does not disclose that the performance of the recheck work had in the past been kept up to date or that in the present case that it had to be brought up to date. To the contrary, it appears that it might have been held over for performance at some other time or later date. Therefore, since we cannot conclude that the Claimant as Recheck Clerk would have performed the work in question on an overtime basis, we cannot find that the instant claim should be allowed.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1956.