Award No. 7239
Docket No. CL-7036

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

1. The Carrier violated the terms of the currently effective agreement between the parties when on May 6, 1952, it unilaterally transferred the work of preparing the final interline received correction account statements from the seniority district of the General Auditor, Accounting Machine and File Bureau, to the seniority district of the Auditor of Revenues, St. Louis General Offices and required correction account posters Wm. G. Gamache, Donald J. Meyer, Jerome J. O'Brien and R. A. Kuenzle to perform the work by use of a newly acquired Apeco Auto-Stat Machine both during their regularly assigned hours and on overtime, until corrected on or about July 23, 1952.

2. That Messrs. Gamache, Meyer, O'Brien and Kuenzle now be additionally paid for the following number of hours, representing the time they were required to suspend work on their regularly assigned positions of correction account posters during their assigned hours at the pro rata rate of their positions: Gamache 36½ hours, Meyer 68 hours, O'Brien 150½ hours and Kuenzle 74¼ hours.

3. That the senior typist who regularly performs the work of preparing final statements of interline received correction accounts, be paid at overtime rate of her position for all time spent by the correction account posters in performance of this work outside their assigned hours, amounting to a total of 15 hours overtime.

EMPLOYES' STATEMENT OF FACTS: On or about May 6, 1952 the Carrier placed in operation, in the office and seniority district of the Auditor of Revenues, a machine known as an Apeco Auto-Stat machine and assigned correction account posters Wm. G. Gamache, Donald J. Meyer, Jerome J. O'Brien and Robert A. Kuenzle to operate the machine in the performance of certain of their regularly assigned work and in addition, unilaterally assigned them the work of making the final statements of interline received correction accounts, which latter work had, for many many years been performed by typists in the seniority district of the General Auditor, Accounting Machine and File Bureau, until on or about July 23, 1952 when the

"No overtime hours shall be worked except by direction of proper authority except in cases of emergency where advance authority is not obtainable. In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is primarily necessary shall be given preference."

This brings the Carrier back to the point where this Division has held (Award 6309) that the transfer of work from one seniority district to another is a violation of the seniority rights of the employes in the district from which the work is taken. If the work were improperly transferred as claimed, the organization would have this Division disregard any violation of the seniority rights of the employes in the district from which the work was taken, except to the extent of 15 hours overtime, as otherwise they cannot maintain a claim for straight time hours in behalf of the correction account posters under the absorbing overtime rule.

In awards dealing with claims relating to the improper transfer of work from one seniority district to another, the Carrier does not recall an award where the employes, as here, have attempted to distinguish between overtime work and straight time work insofar as the seniority districts rule is concerned. If the senior available typist is entitled to the 15 hours overtime because she is one of the employes regularly assigned to that class of work, it would appear that the typists would also be entitled to the straight time hours required to perform work which the employes allege was improperly transferred, but the organization does not so claim, and that is not the claim before this Division. This again shows that the claim as submitted is so inappropriate and invalid that it should be denied. The agreement rules cannot be interpreted one way with respect to Part 2 and another way with respect to Part 3 of the employes' claim. That is what the employes are asking this Division to do.

The four correction account posters were compensated for all time worked on the photographic machine and unless there was an improper transfer of work from one seniority district to another, which has been denied by the Carrier, none of the employes has a legitimate time claim, but should this Division find there was an improper transfer of work from one seniority district to another, Part 2 of the employes' claim should be denied for the reason that no overtime was absorbed in violation of Rule 47 and for the additional reason that no employes should be permitted to enrich themselves to the disadvantage of other employes represented by the same Brotherhood and working under the same agreement rules.

This Division is requested to find that the Carrier did not violate the working agreement as claimed.

All data submitted in support of Carrier's position have been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits Not Reproduced)

OPINION OF BOARD: On May 6, 1952 the Carrier purchased and placed in service on an experimental basis for use in the production of correction accounts an "Apeco" photographing device to eliminate certain operations inherent in the production of correction accounts by the typing process. The typing work in question had been, prior to the introduction of the new Apeco machine, performed in the seniority district of the General Auditor. During the period in which the Apeco Auto-Stat machine was in use, May 6, 1952 to July 22, 1952, the correction accounts work was performed in the Auditor of Revenues seniority district. Therefore, the basic issue in this case involves an alleged improper transfer or removal of work from one seniority district to another in violation of Rule 5—Seniority Districts. (Awards 756 and 6309.)

Since the experiment did not prove to be satisfactory, the Carrier terminated it July 22, 1952, and returned the work to the typing employes in the seniority district of the General Auditor, as of July 23, 1952.

In addition to the claim of a violation of Rule 5, point 2 of Statement of Claim is for pay for certain individuals who were allegedly required to suspend work on their regularly assigned duties to absorb overtime. Rule 47 specifically states that "Employes shall not be required to suspend work during regular hours to absorb overtime."

The final claim is that the senior typist who regularly performs the work of preparing final statements of interline received correction accounts be paid at the overtime rate of her position for the time spent by the correction account posters in the performance of this work outside their assigned hours, amounting to a total of fifteen hours overtime.

The Carrier contends that the typing work was eliminated rather than transferred. Therefore, it is claimed that there was no violation of Rule 5. The record clearly shows that the work in question was not eliminated. The fact that improved mechanical facilities had been introduced does not change the kind or class of work being done. (Award 4078.) The seniority provisions pertain to the kind of work and not the method of performing it. As we said in Award 864,

> ". . . Improved methods have no more effect upon such agreements than such agreements have upon the right of the carrier to install such methods. Certainly no one would question the right of carriers to make improvements in methods of performing work and we think it is equally true that improved methods do not operate to take the work out from under contracts with employes performing same . . . ."

(See also Award 4033.)

During the period in question the work of preparing the final interline received correction account statements was unilaterally transferred from the seniority district of the General Auditor, Accounting Machine and File Bureau, to the seniority district of the Auditor of Revenues, St. Louis General Offices. This was contrary to the provisions of Rule 5. Claim 1 must, therefore, be sustained.

Claim 2 is predicated upon an alleged violation of Rule 47. We search the record in vain for any proof that these employes were "required to suspend work during regular hours to absorb overtime." They worked their regular assignments and were fully compensated for their regularly assigned hours. Also, on August 25, 1952, the Brotherhood's General Office Chairman acknowledged that "correction accounts have not been prepared on an overtime basis."

In fact, instead of suspending work to absorb overtime, the record indicates that these employes had correspondingly more overtime work during the period in question than they had prior to May 6, 1952. One does not gain overtime by asborbing it. And employes who worked their regularly assigned hours, and had more instead of less overtime hours, could hardly be said to have been "required to suspend work during regular hours to absorb overtime."

Claim 3 is predicated upon that part of Rule 48 which specifies that,

> "In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is primarily necessary shall be given preference."

Since the work in question was properly within the seniority district of the senior typist who regularly performed this work, and since we have found that the work was improperly moved to another seniority district, this claim is not without merit. However, since the senior typist did not actually work the fifteen overtime hours, but the work was performed by others who were paid the punitive rate, we sustain such claim at the pro rata rate

rather than at the time and one-half rate. This claim shall be sustained, subject to this qualification.

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 violated.

AWARD

Claim 1 sustained.

Claim 2 denied.

Claim 3 sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.