Award No. 7625
Docket No. CL-7603

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 that:

1. Carrier volated the present working agreement in Local Freight Office at Wichita Falls, Texas when it required or permitted Chief Clerk to Local Agent, E. T. Northcutt, to suspend work on his regularly assigned position and perform work that is specifically assigned to position of Chief Yard Clerk occupied by W. P. Jacks; also,

2. (a) That Mr. E. T. Northcutt, in addition to pay already received, be paid an additional day's pay at his regular rate of $17.01 per day on each of the twenty (20) working days in the period July 20 through August 16, 1954 that he was withheld from his position and required to work Chief Yard Clerk's position; and

(b) That Mr. W. P. Jacks, Chief Yard Clerk, be paid at the rate of time and one-half for the 200 hours worked by Messrs. Northcutt and Williamson, Transportation Inspector, which represents overtime he would have earned had the Carrier not assigned or permitted Northcutt and Williamson to perform his work.

EMPLOYES' STATEMENT OF FACTS: Mr. Harold Williamson is Transportation Inspector out of the Superintendent of Transportation office at Fort Worth, Texas. The position of Transportation Inspector occupied by Mr. Williamson is designated as an "A" position in the working rules agreement and is subject to only the following rules: Nos. 1, 5, 15, 17, 25, 27 and 65. This position is considered one with token coverage.

During the period July 20 through August 16, 1954, Mr. Williamson devoted approximately five (5) days of his time (or 40 hours) in the Local Freight and Yard office at Wichita Falls, Texas, **making corrections due on Interchange and working old interchange supplements for the years 1950, 1951, 1952, 1953 and 1954.** (See Employes' Exhibit "E".)

Mr. E. T. Northcutt occupies position of Chief Clerk to Local Freight Agent and has supervision over both Freight Station and Yard Office employes. This particular office is a combination office of Superintendent, Local Freight and Yard Office.

for convenience in checking with the M-K-T and to expedite the signing of these reports by the Local Freight Agents of the Carriers involved that the records at Wichita Falls were used to make sure all the requests for supplementary interchange reports were being properly progressed. The claimants herein certainly could not contend Transportation Inspector Williamson was encroaching on their duties and thereby absorbing overtime due them if he had made this same check of their work in the Car Accountant's office at Fort Worth, where they do not hold seniority rights, instead of checking duplicates of the very same set of records in the Local Agent's office at Wichita Falls. As previously stated, it is a part of the duties of Transportation Inspector Williamson to see that proper records are maintained at interchange points to effect car hire settlements. His efforts in this dispute were not at variance with his usual duties, and in no way deprived the claimant of work because Mr. Williamson did not prepare any of the supplementary interchange reports.

The Employes' claim for approximately five days' time arising from the time that Transportation Inspector Williamson allegedly devoted to this work is entirely without foundation. The Employes were unable in conference to state the nature of the work they alleged Inspector Williamson performed giving rise to this claim, nor could they furnish specific time or dates on which it was allegedly performed. The Carrier has herein furnished the Employes with the dates and time that Transportation Inspector Williamson was at Wichita Falls, but denies the contention that he performed any work whatsoever upon which they could base this claim. This statement is amply supported by Carrier's Exhibit No. 1. It has been held many times that the Petitioner must furnish more than a naked allegation on which to base time claims.

The claim of W. P. Jacks, based on Transportation Inspector Williamson's activities, is not only nebulous but is fictional as well. As such, it is without merit and must be denied.

GENERAL

Rule 46 of the collective bargaining agreement, dealing with overtime, has been a part of the agreement between the parties since February 1, 1922. The meaning of this rule has been clearly understood throughout the past 32 years, i. e., that the employes are not to be required to suspend work during regularly assigned hours in order to perform work outside their regularly assigned hours on a straight time basis. No matter how the "Absorbing Overtime" rule is interpreted, it is clear that in order for a violation to occur, two things must take place: first, there must be a suspension of work, and second, there must be an absorption of overtime. Since neither of these two things occurred here, the record is conclusive that no violation of Rule 46 took place. The facts prove without doubt that there was no suspension of work. The claimants in this dispute worked all of their assigned hours on the dates covered by these claims. Furthermore, they were performing work which was a part of their regularly assigned duties.

The Clerks' Organization on this Carrier has recently progressed to this Division another dispute involving Rule 46—Absorbing Overtime—in which their position was much the same as in this dispute. Their interpretation of Rule 46 in both disputes is so highly technical that it does not square with the findings of this Board nor with the intended application of this rule as generally recognized. In Third Division Award 6966 it was stated:

Third Division Award 6966, BRC v FW&D, Referee LeRoy A. Rader

"**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 assignments and perform work of the Joel assignment. Cited is Rule 46:

> 'Absorbing Overtime. Employes 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 position taken by Petitioners to be technical in its application to the facts here presented."

In Award 6966 the Board upheld the interpretation placed on Rule 46 by this Carrier, which was the same as now advanced, that there was no violation of this rule because there was no suspension of work by the claimants nor was any overtime absorbed by rendition of the complained of work, and also held that the claimant did not have the exclusive right to perform the work in dispute.

The Carrier respectfully requests the Board to maintain consistency of interpretation of Rule 46 on this property and deny this claim in its entirety.

While the Carrier is certain that in the light of the facts and evidence herein submitted, the claim can only be denied in its entirety, it desires to point out that the statement of claim seeks a double penalty in that additional pay is demanded both for the claimant who actually performed the work and for another claimant who would have allegedly performed the work at punitive rates had it been assigned to him. The Board has consistently refused to allow double penalties, as is evidenced by Third Division Awards 4109, 5423 and 5473.

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

(Exhibits not Reproduced.)

OPINION OF BOARD: This claim primarily concerns an alleged violation of Rule 46, which reads as follows:

> "Rule 46. Absorbing Overtime. Employes will not be required to suspend work during regular hours to absorb overtime."

Reparations are sought in behalf of E. T. Northcutt, Chief Clerk to the Local Agent in the amount of an added day's pay between July 20, and August 16, 1954, inclusive, and for W. P. Jacks, Chief Yard Clerk for 200 hours at the punitive rate, for the same period of time.

The work involved the making Supplemental Car Interchange Reports and Corrections, bringing such records for a number of back years, up to date.

The Organization alleges that this work should have been done in this instance by the Chief Yard Clerk since the bulletin covering this position contemplated that the "Handling of Car Interchange" would be done by the occupant of such position, and comprises in the main, the exclusive duties thereof (Chief Yard Clerk). It was asserted that employe Northcutt performed this "Interchange Report" work almost exclusively on the days in question, thus clearly demonstrating the suspension of the said Northcutt from the duties of his position as Chief Clerk to the Local Agent and the resulting absorption of overtime otherwise accruing to the Chief Yard Clerk position.

The Respondent counters that the preparation of the supplemental Interchange Reports had never been the exclusive work of the Chief Yard Clerk position but rather that such work had always been "made current" by the Chief Clerk to the Local Agent, whose bulletined duties included the making of reports essential to freight and yard operations. It was further contended by the respondent that the work performed by Transportation Inspector Williamson was of a supervisory nature only; and finally that there was no overtime work performed or required in connection with the work which is here involved.

An examination of the job description (duties) of both the Chief Clerk to the Local Agent and the Chief Yard Clerk, as evidenced by the bulletins for the respective positions, indicate that the performance of "Supplementary Interchange Report" work could reasonably and properly be required of, and assigned to either position. There is nothing in the record to refute the Respondent's contention that the Chief Yard Clerk performed approximately 25% of the Interchange Work in conjunction with his other duties, with the remainder thereof being allowed to go "stack up." Likewise, the record discloses that Chief Clerk to the Local Agent had historically prepared and worked on these "Non-Current" reports when the other duties and responsibilities of his position permitted. The instructions given Transportation Inspector Williamson were to the effect that he was to "Check and see that this work was brought up to date and properly done." He performed none of the actual work. Thus, Claimant Northcutt was not required to suspend work on his position and perform work that was specifically or exclusively assigned to the Chief Yard Clerk position. The Respondent's present needs did not result in any overtime work being performed nor is there evidence that such was required. This Board held in Award 7167 that:

> "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 employe 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 employe may not be taken from his regular assignment and used on the work of another position where it would result in depriving the employe of the other position of overtime 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."

This claim lacks merit.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois. this 29th day of January, 1957.