

Award No. 8312

Docket No. CL-8184

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) Carrier violated the Clerks' current Agreement when it failed to call regular employes, C. A. Wallace, Platform Foreman and Laborers Joe Wilson and Willie George to perform work of their positions on Sunday, August 9, 1953, which was performed by regular issueman G. A. Temple, all employes at the Pine Bluff, Arkansas, Stores.

(2) That Messrs. C. A. Wallace, Joe Wilson and Willie George be paid for time lost, i. e., eight hours at one and one-half times their regular rates of pay.

(3) That Mr. G. A. Temple be paid additionally at Foreman's rate of pay for the time it took him to perform the work of Foreman on August 9, 1953, approximately thirty (30) minutes at penalty rate.

EMPLOYEES' STATEMENT OF FACTS: All of the Claimants in the instant dispute are regular assigned employes of the Carrier at its General Store Department, Pine Bluff, Arkansas, viz: C. A. Wallace, Platform Foreman; Joe Wilson and Willie George, Laborers; G. A. Temple Issueman.

Platform Foreman C. A. Wallace and Laborers Joe Wilson and Willie George are assigned to work Monday through Friday each week, with Saturday and Sunday as rest days. A part of their regular assigned duties are to unload incoming material and supplies from cars and placing it into bins, or a designated place, for future issuing-out as needed and ordered by the various departments.

As Issueman, Mr. Temple fills orders from stock kept in the bins, or a designated place, and not from material and supplies which have not been checked, unloaded and placed in stock for future use.

On Sunday, August 9, 1953, the Car Department ordered 100—10" journal brass and, since there was none in the journal brass storage space, Mr. Temple was required to check and unload the 100 pieces of 10" journal brass from Car UP-162385 in filling the Car Department order.

pieces of journal brass in nine and ten inch sizes. The Issueman issued 100 pieces of the ten inch brass to the Car Department and left the remaining 600 pieces to be stored in the storeroom the following morning.

The Issueman performed no duties other than those assigned to him, that being to deliver material requested of him and he did not suspend work from his regular assignment in performing these normal duties.

In Third Division Award 5331 (Referee Francis J. Robertson) the Board held:

"Except insofar as it has restrained itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy. * * *" (Emphasis added)

In this case it is clear that the Carrier has not restricted itself to issuing material only from storage. It is not limited by agreement from issuing material directly from the car at the storeroom platform.

The Employees have the burden of proof. But they have cited no rule except Rule 32-10. That rule clearly is not involved as the Issueman was not suspended from his assignment at any time or for any reason.

The Employees argue, Exhibit 3, that if the Carrier's reasoning is accepted it would be equivalent to permitting the Issueman to enter box cars at the Pine Bluff Transfer Shed and issue such material requested to an outside firm or representative of another department of this company. Obviously there is no basis for such conclusion. Material is not issued at the Pine Bluff Transfer Shed and the question of who has the right to perform work at the Transfer Shed is not involved in the instant dispute. The Transfer Shed is not in the storeroom area. It is a freight transfer operation located approximately one-half mile from the storeroom area which is within the shop enclosure. Neither the Issueman nor any other store department employee is assigned any work at the Transfer Shed.

Award 5413 cited by the Employees is not applicable to the instant dispute. It involves a claim in which Roster "B" employees perform Roster "A" employees work and deprived Roster "A" employees of a call. The work in question was not that of issuing material but of inspecting cars to see if they needed icing before shipment, etc.

Award 5104 also cited by the Employees involved the assigning of Group 2 messengers to the work of checking perishable trains instead of using yard clerks. Obviously it has no bearing in the instant dispute.

In conclusion, the Carrier respectfully submits that the claim of the Employees clearly is without merit or support under the rules of the current agreement and should be denied in its entirety.

All data herein has been presented to representatives of the Employees in correspondence and/or conference.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant G. A. Temple is a regularly assigned Issueman (Group 2), 7 A.M.-3 P.M., Wednesday through Sunday, at Carrier's General Stores Department at Pine Bluff, Arkansas. His duties are to issue materials and supplies upon requisition to the Mechanical and other departments and shops located at Pine Bluff.

On Sunday, August 9, 1953, the Car Department asked Temple for 100 ten-inch journal brass. There was none of this size journal brass in the storeroom, from which place Temple would ordinarily fill such an order, but there was a freight car spotted at the storeroom platform for unloading which contained 700 pieces of the required brass. Temple opened the car and delivered 100 pieces of brass directly to the Car Department from the freight car. This took him approximately the same amount of time it would have taken him to issue the brass if it had been stored in the storeroom and he had issued it from there.

The work of unloading stores from freight cars and delivering them to the storeroom is customarily and regularly performed by a labor gang (Group 3), supervised by a Platform Foreman (Group 1), regularly assigned 7 A. M.-4 P. M., Monday through Friday. There were no employees assigned to do this unloading work on Sunday, August 9, 1953, a rest day of the regular gang.

It is contended that Temple was required to suspend work from his position to absorb overtime which should have been paid to the labor gang and its supervisor, all of whom should have been called to do the work. Claim is made for one day's pay at time-and-one-half for each of the laborers and the platform foreman, and 30 minutes at the foreman's penalty rate for Temple, for performing foreman's work. The claim for the foreman and laborers is based upon Rule 32-8 and that for Temple upon Rule 32-10. These rules read:

"32-8. **Work on Unassigned Days.** Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"32-10. Employees will not be required to suspend work during regular hours to absorb overtime."

In addition, it is contended that the Scope Rule was violated since Temple, a Group 2 employee, performed Group 1 or Group 3 work.

Manifestly, unless the record supports the conclusion that the work of issuing the brass out of the freight car could not be performed properly under Agreement rules by Temple in the course of his assignment, the claim cannot be sustained. Petitioner asserts that Temple can issue stock only out of the storeroom after it has been unloaded and placed there by the labor gang; only the labor gang can take it out of the car. These assertions are based apparently on the existence of the unloading assignments and on customary practice on the property. However, we do not think that the burden of supporting these assertions is met by the evidence in the record. In our view, Temple did not suspend work on his own assignment; nor did he perform rest day work of the foreman's or laborers assignments. He was not assigned to unload the freight car. He was presented with a requisition which was his duty to fill as a normal incident of his assignment as Issueman. He performed the same work with regard to the brass as if it had been in the storeroom—checking it and handing it out. Accordingly, the claim must be denied.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1958.