

Award No. 12088

Docket No. CL-11872

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., 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) That Carrier violated the Clerks' current Agreement, beginning July 23, 1958, at Dallas, Texas, when it instructed and required Mr. J. E. Sanders to perform General Freight Claim Department work and failed to properly compensate him therefor.

(2) That Mr. J. E. Sanders, and/or his successor, or successors, be paid the difference between that he was paid as Claim Clerk, Dallas Freight Station, and that of Claim Clerk, Dallas Salvage Warehouse, beginning with July 23, 1958, and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. E. Sanders, whose Group 1 seniority on the Southern Division Stations and Yards seniority district roster dates from August 2, 1942, is a regularly assigned Claim Clerk, Dallas Freight Station, whose regularly assigned duties, prior to July 23, 1958, consisted of handling of correspondence in connection with freight claims, handling Fort Worth and Denver Railway salvage picked up and returned to the Carrier, handling with customers for disposition and settlement on damaged or lost merchandise, and assisting the Chief Claim Clerk in all matters pertaining to freight claim work, and his rate of pay, according to our calculations, is \$18.17 per day.

Prior to July 14, 1958, in the Dallas Salvage Warehouse, which is a part of the General Freight Claim Department seniority district and is located adjacent to the Freight Station, there was also a position titled Claim Clerk, occupied by Mr. L. R. Hill, and the assigned duties consisted of:

"Perform clerical work for the Salvage Agent, including listing of freight received by lot numbers and the recording of

himself. The other claim clerk handled the accounting and reports, and did some selling. Claimant handled the checking in of the salvage and did some selling.

His rate of \$18.41 covered the handling of salvage including selling which he had done since he was assigned to the position. He continued to handle his other assigned duties as he did when the Dallas salvage came into the freight house. Clearly his rate of \$18.41 continued as his proper rate.

The Employees cite Rule 40-1, reading:

"40-1. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

Claimant was not assigned to a higher rated position either temporarily or permanently. He was filling his own position.

The Carrier respectfully submits there was no violation of rules, and requests that the claim be denied.

All data herein has been presented to Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue properly raised for decision by this docket is whether the employe has met the burden of producing sufficient facts to establish that he was performing higher rated duties while on duty in the Salvage Warehouse. We hold that he has:

It is well settled that it is not necessary for an employe to perform all of the duties and responsibilities of a higher rated position to be entitled to pay at the higher rate — 6129, 751, 2270, 4339, 4545, 4669 and 5252.

The lower rated freight claim clerk duties were described in Advertisement No. 23, May 11, 1954 as:

"... answer SWT and Rail correspondence, handle CB and FWD salvage, and assist Chief Clerk in all matters pertaining to claim work."

This was described in further detail by the employe in his statement of facts as:

"... handling of correspondence in connection with freight claims, handling Fort Worth and Denver Railway salvage picked up and returned to the Carrier, handling with customers for disposition and settlement on damaged or lost merchandise, and assisting the Chief Claim Clerk in all matters pertaining to freight claim work . . ."

The higher rated Claim Clerk in the Salvage Warehouse had his duties described in the advertisement bulletin as follows:

"... perform clerical work for the Salvage Agent, including listing of freight received by lot numbers and the recording of

amounts realized, making remittance statement of proceeds of sales under the instructions of the Salvage Agent; assist in the handling of freight from cars into warehouse, also in the warehouse, including delivery to purchaser and obtaining their acknowledgement of the sales on regular sales form; and conduct private sale or auction sale of salvage in absence of or on instructions of Salvage Agent"

The employe showed that after his desk was moved from the Freight Office to the Salvage Warehouse he performed the following new duties: marking and pricing salvage, posting out salvage, check and price five cars and two road trucks every two weeks, selling salvage and making sales slips on the salvage sold. It is significant to note that at the time of his physical relocation some of his work in the Freight Office was turned over to various other freight office clerks.

Although there is an obvious overlapping and duplication of the duties performed by freight claim clerks at the Dallas Office and the claim clerks at the Salvage Warehouse, we are satisfied on careful examination of the entire record that the duties performed by the employe Sanders while at the Salvage Warehouse included at least part of those formerly performed by the Salvage Warehouse Claim Clerk.

We note for the record that it is conceded that the Carrier's denial letter was timely.

The question of which seniority district should fill the Salvage Warehouse claim clerk position not having been raised on the property is not properly before us — Circular No. 1, 6954, 8426, 10738, 10904, 11005. The assertion by employe that his Statement of Claim fairly raises the seniority district issue is without merit since it is clearly a time claim. Employees Exhibit A-1 to this ex parte claim admits this.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12088
(DOCKET CL-11872)**

AWARD 12088 is in error.

The principle stated in paragraph two is incomplete. In order to be entitled to a higher rate of pay, it is essential that the duties performed be some significant duties which caused the position to be higher rated. **Awards 10906 — Moore, 9417 — Bernstein, 4567 — Whiting, 5911 — Douglass, 6413 — McMahon.**

Performance of work from a higher rated position which is common to both positions has been repeatedly held insufficient for claimant (occupant of a lower rated position) to qualify for the higher rate. **Awards 9784, 9787 — Fleming, 10603 — Dolnick, 11663 — Engelstein, 8231 — Lynch, 10021 — Rose, 7162 — Smith.**

The record does not support this decision.

Carrier's declination letter postmarked April 6, received by the organization April 7, in response to a claim dated February 5 was within the time limit provisions of Article V, Section 1 (a) of the 1954 National Agreement, and we concur with the finding of the majority that "we note for the record that it is conceded that the carrier's denial letter was timely."

For the reasons given and others, we dissent and concur with the Award.

/s/ **W. M. Roberts**

/s/ **G. L. Naylor**

/s/ **R. E. Black**

/s/ **W. F. Euker**

/s/ **R. A. DeRossett**