

Award No. 13186
Docket No. CL-13004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5031) that:

(a) Carrier violated the rules of the Clerks' Agreement at Roseville, California, when on January 16, 1960, it deprived Mr. William C. Eddy, Relief Train Clerk No. 6, of the right to perform service on his position and arbitrarily required him to fill Train Clerk Position No. 48; and

(b) Carrier shall now be required to allow Mr. William C. Eddy an additional eight hours' compensation at the pro rata rate of Train Clerk for January 16, 1960.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. At the time of this dispute Mr. William C. Eddy (hereinafter referred to as the Claimant) was the regular assigned incumbent of Relief Position No. 6, with the following relief schedule:

Thursday	—	Train Clerk No. 48 (IBM)	—	12:01 A. M.—8:00 A. M.
Friday	—	Train Clerk No. 53 (Diversion)	—	12:01 A. M.—8:00 A. M.
Saturday	—	Train Clerk No. 53 (Diversion)	—	12:01 A. M.—8:00 A. M.
Sunday	—	Train Clerk No. 8 (East)	—	12:01 A. M.—8:00 A. M.
Monday	—	Train Clerk No. 8 (East)	—	12:01 A. M.—8:00 A. M.
Tuesday	—	Rest Day		
Wednesday	—	Rest Day		

particular yard area being specified. That the Carrier designates certain portions to be worked by each Checker after assignment to the Yard does not confer upon such Checker the exclusive right to do whatever work arises there.

It appears that the Carrier never assigned any particular Yard to any one individual. Originally, the Yard Checkers divided up the yard checking amongst themselves and from time to time have traded yards or portions of yards. Unless the Agreement provides otherwise, it is within Management's prerogative to determine where these Yard Checkers are to render their services (Award 7786, Lynch, and Awards therein cited). The apparent divisibility in assigned duties is purely to avoid overlapping, or duplication. This division of work made for the sake of convenience cannot be construed as conferring on the Claimants any right to exclusivity, as argued by them.

On this record in this case, we do not find that these Claimants had the exclusive right to perform all the checking work in the area to which they usually are assigned.

The work involved is of a type reserved to the Yard Checkers as a class, and not to any incumbent of a particular position. As a consequence, where there are two or more employees in this class entitled to perform the work on an overtime basis, the senior employee in that class has priority (Award 5266, Robertson)."

In view of the foregoing, it is obvious that Rule 26 (Seniority Datum) is not involved in this case.

Carrier submits it has clearly shown herein that claimant in this case was properly used on the date of this claim on work which could be properly required of him in his classification of train clerk.

CONCLUSION

The claim in this Docket is entirely lacking in either merit or agreement support, and Carrier requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, who is the regularly assigned incumbent of Relief Position No. 6, ordinarily relieves Train Clerk Position No. 48 on Thursdays and Train Clerk Position No. 53 on Fridays. On Friday, January 16, 1960, the train clerk regularly assigned to Position No. 48 was off account of illness. On that date, C. J. Harrigan, another train clerk, was called to fill the vacancy.

Claimant contends that instead of assigning Harrigan to Position No. 48, which was vacant, the Carrier assigned Claimant to perform the work of and fill the vacancy of Position No. 48. He further contends that Harrigan was used to fill his then vacated Position No. 53. He then asserts that he is entitled to pay for performing work on Position No. 48 on Friday in addition to one day's pay for being deprived of his right to perform work on Position No. 53 on the same date.

It is the position of the Claimant that by assigning him to Position No. 48 on Friday, rather than to Position No. 53, the Carrier violated the Agreement. He cites no specific rule violated, but bases his claim upon the principles of seniority. He contends that the seniority rule prevents changing Claimant from a bidden position to another position.

Carrier denies any violation of the Agreement. It contends that there is absolutely no evidence to show that the work of Positions No. 48 and 53, both bulletined train clerk positions, was different. It also denies that Claimant was assigned to any work which was not a part of his regular duties as a train clerk. It contends that the work of the two positions was intermingled on this occasion. It asserts its right to so intermingle the work of two positions all within the train clerks' classification.

We have examined the record, and are unable to find any evidence to support Claimant's contention. There is no evidence to show that the duties involved in Positions No. 48 and 53 were different, or that the work could not be intermingled or interchanged. It should be noted that Claimant is assigned to relieve one position on one day and the other on the next. Further, there is not even any evidence to support Claimant's assertion that he performed the work of Position No. 48 on the day in question instead of the work normally involved on Position 53, if there is any difference. In view of the record, we are certainly unwilling to award a train clerk two days' pay for one day's work at a train clerk's position. We think this case is clearly distinguishable from Award 5306, where the evidence clearly pointed out the difference in duties at specifically identifiable positions. Here, there is no evidence to support Claimant's contention that the duties of two positions within the train clerk classification were as divided and detailed as in that case.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1964.