Award No. 13218
Docket No. CL-13013

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY (NORTHWESTERN DISTRICT)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5042) that:

(a) Carrier violated the Clerks' Agreement at Portland, Oregon Freight Station on May 19, 1960 to and including July 22, 1960 when it required Clerk D. A. Towle, with assigned hours 8:00 A. M. to 5:00 P. M., Saturdays and Sundays as rest days, to suspend work on his regular Class 1 position of Check Clerk in the Warehouse Office and required him to report out in the Freight House to handle loading and unloading of freight, which is regularly assigned to Class 2 positions.

(b) Loader B. J. Tipton shall be paid one hour and thirty minutes daily except Saturdays, Sundays, and holidays from May 19th to May 27th, 1960 inclusive; and that Loader W. J. Sauer shall be paid one hour and thirty minutes daily except Saturdays, Sundays, and holidays, May 31, 1960 to and including July 22, 1960.

EMPLOYES' STATEMENT OF FACTS: At the Portland, Oregon Freight Station the Carrier maintains a regular force of Class 1 and Class 2 employes and during the months of May, June, and July, 1960, the regular forces consisted of the following:

CLASS 1

JOB NO.	TITLE	STARTING TIME
100	Platform Foreman	9:30 AM
101	Ass't. Platform Foreman	6:00 AM
102	Ass't. Platform Foreman	2:00 PM
103	Stamp Clerk	9:30 AM
S-104	Salvage Room Clerk	8:00 AM
S-105	Check Clerk	8:00 AM
S-106	Check Clerk	8:00 AM
107	Check Clerk	9:30 AM

(Exhibits not reproduced.)

OPINION OF BOARD: The Employes here allege a violation of the Clerks' Agreement when, during the period set out in the Statement of Claim, the Carrier required a Class 1, regularly-assigned Check Clerk, with hours of 8:00 A. M. to 5:00 P. M., to assist with the loading and unloading of freight at Carrier's Portland, Oregon, freight station. He was so used between 8:00 and 9:30 A. M. on each day of the aforesaid period. Thereafter he resumed his regular duties of checking freight and preparing reports for the remainder of each of his workdays.

The Employes charge that the Check Clerk was required to suspend work on his regular Class 1 position to handle the duties assigned Class 2 employes and that this was violative of Rule 38, paragraphs (b) and (c) which read as follows:

> "(b) Employes will not be required to suspend work during assigned hours to absorb overtime.
>
> "(c) 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 and after assigned hours, employes filling the particular positions on which overis required will be used."

as well as the seniority provisions of the basic Agreement.

Claimants were Class 2 employes with assigned hours of service from 9:30 A. M. to 6:30 P. M. Each was a senior "Loader" assigned to the work of loading and unloading freight into and out of cars, and over the freight platform. They claim they were entitled to have been called and used on an overtime basis to perform the work required of the aforesaid Check Clerk.

The Employes' contention that a Class 1 Clerk may not properly be required to perform any Class 2 work under the Scope Rule of the Agreement in evidence is untenable. Class 1 employes are classified as Clerks who regularly devote not less than four hours each workday to those clerical duties described under paragraph (a) of the Scope Rule (Rule 1). Their duties are preponderantly clerical in substance. Class 2 employes include all other covered employes whose job titles and duties are listed and described under paragraph (b) of the same rule. That neither the Scope Rule nor any other rule of the agreement prohibits the performance of Group 2 work by Group 1 employes, nor specifically reserves the performance of all such work to the Group 2 Classification, has been established on this property (see Award Nos. 19 and 29 of SBA No. 173), and that finding is in consonance with the precedential authority of many awards of this Division in interpreting and applying similar scope and seniority rules of the Clerks' Agreements on other properties. The best exposition of the reasons for such holdings may be found in our Award No. 7167 (Referee Carter). There the issue, the schedule rules, and the facts were substantially the same as those present here. In pertinent part, the Board held:

> "Since all work within the scope of the agreement is performed by the various classes of employes classified in Rule 1 and defined in Rule 2, it is clear that the agreement itself contemplates that a clerical worker doing 4 hours of work defined in Rule 2 (a) shall perform 4 hours of other work within the scope of the agreement. Under such a

situation, the purpose of defining clerical workers in Rule 2 (a) is to identify the higher skilled employes for pay purposes and to preserve to that group the higher rated positions. It does not have the effect of giving them clerical work exclusively or of limiting them to the performance of that work only. Nor does the applicable rule purport to give Waybill Assorters the exclusive right to perform all of this lower rated work. It is true that seniority rosters are maintained in each group. As to Group 1 employes this is done in order to determine the order in which employes in this higher rated group may be cut off in force reduction and exercise any seniority rights they may have to the lower rated Group 2 positions. As to Group 2 employes the maintenance of a seniority roster serves to determine those in that group who are entitled to move up into the higher rated Group 1 positions when vacancies occur or additional positions are required in that group. We concur with the general views contended for by the Organization that employes on one seniority roster may not ordinarily be used to perform the work of positions whose occupants are on a different seniority roster. But when it is the clear intent of the agreement, as here, that higher rated employes on one roster may perform the lower rated work of employes on another roster, there is no violation of the agreement for them to do. Since Rule 2(a) contemplates the use of clerical workers in lower rated work at their higher rate of pay, it cannot be said that their use in such work was for the purpose of absorbing overtime under Rule 30." (Cf. Awards 6140, 9047 and 11988).

We concur in the reasoning and conclusions of the foregoing Opinion and adopt its findings as applicable and controlling here on the question of violation of the scope and seniority rules of the Agreement.

As to violation of the absorption of overtime rule (Rule 38), the Board has consistently held that to find a violation of the rule the record must contain credible evidence showing either (a) that the carrier suspended an employe (claimant) during his regularly assigned hours to equalize or absorb overtime which he had already earned, or (b), 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 have accrued (Award 7167, cited supra). Here the latter principle would apply under the rule as interpreted but for the fact there is no evidence that Claimants would have earned any overtime had the Check Clerk not been used. No emergent situation is shown to have existed that would have required payment of overtime to Claimants. Other loaders were on duty at the time the Check Clerk assisted in handling the freight. They have not been heard to claim they were deprived of any overtime. To succeed here, the Claimants must establish that they, and they alone, as incumbents of Loader positions were deprived of overtime compensation as a result of using the Check Clerk. Under the facts present here, this cannot be established because there is no evidence that had the Check Clerk not been used, the work would have had to be performed by the Claimants on an overtime basis. Here no one was "suspended" from his regular assignment (as was the Case in Award 2346 cited and strongly relied on by the Employes); all worked their regularly-assigned hours; no one earned or was deprived of any overtime. Under these circumstances, it cannot be held that Rule 38 was violated.

Accordingly, the claim will 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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1965.