

Award No. 14841
Docket No. CL-15054

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, 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-5562) that:

(a) The Southern Pacific Company violated the Agreement between the parties at Eugene, Oregon, on August 1, 1961, when it refused to place Mr. G. E. Moorehead on Position No. 51, Assistant Chief Clerk, upon duly presented application therefor; and,

(b) The Southern Pacific Company shall now be required to allow Mr. G. E. Moorehead eight (8) hours' additional compensation at the pro rata rate of Position No. 51 each date August 2, 3, 4, 7, 8, 9 and 10, 1961.

EMPLOYEES' 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.

Effective July 31, 1961, Mr. O. H. Olson, regular assigned incumbent of Position No. 51 Assistant Chief Clerk, Eugene, Oregon, hours 1:30 P. M. to 9:30 P. M., rest days Saturday and Sunday, retired from Carrier's service. At 11:00 P. M. on August 1, 1961, Mr. G. E. Moorehead, hereinafter referred to as the Claimant, absent of a qualified and available unassigned employee, made application to fill Position No. 51 pending assignment by bulletin. At this time Claimant was regularly assigned to Position No. 41 Relief Clerk, with the following work schedule:

Saturday	Position No. 69 Car Clerk	7:00 A. M. to 3:30 P. M.
Sunday	Position No. 69 Car Clerk	7:00 A. M. to 3:30 P. M.
Monday	Position No. 71 Freight Clerk	6:30 A. M. to 3:00 P. M.
Tuesday	Position No. 56 Revising Clerk	10:00 P. M. to 6:00 A. M.
Wednesday	Position No. 56 Revising Clerk	10:00 P. M. to 6:00 A. M.
Thursday	Rest Day	
Friday	Rest Day	

Monday, July 31, 1961, and the vacancy so created on Position No. 51 was advertised on Superintendent's Vacancy Notice No. 29 on Wednesday, August 2, 1961, and was awarded to J. A. Becher on Assignment Notice No. 30 on August 11, 1961. Mr. Becher assumed the position on that date.

Position No. 51 was blanked on August 1, 1961, and at 11:00 P.M., that date, C. E. Moorehead (hereinafter called the "claimant"), assigned to relief position described above, filed written application under the provisions of Rule 34(c) of the current agreement to work Position No. 51, to assume duty thereon at 2:30 P.M., August 2. His application to fill Position No. 51 was declined and said position was also blanked on August 2 and 3.

On August 4, 1961, Carrier decided to fill Position No. 51, and unassigned clerk P. A. Brabham, who was qualified to work Position No. 51, was called and used, under the provisions of Rule 34(b) of the current agreement, to fill that position August 4 through August 10.

No unassigned employees, qualified to fill either Position No. 51 or claimant's relief position, were available on August 1, 2 or 3, 1961.

By letter dated September 21, 1961 (Carrier's Exhibit A), Petitioner's District Chairman submitted on appeal claim to Carrier's Division Superintendent in behalf of the claimant, C. E. Moorehead ". . . for eight hours paid for and not worked at pro rata rate of Position No. 51, Assistant Chief Clerk, Eugene, for each date August 2, 3, 4, 7, 8, 9, 10, 1961", and by letter dated November 17, 1961 (Carrier's Exhibit B); the Superintendent denied the claim.

By letter dated January 8, 1962 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated September 16, 1963 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 31, 1961, the regular incumbent of Position No. 51, Assistant Chief Clerk, Eugene, Oregon, retired from service. The vacancy so created was advertised on August 2 and awarded on August 11. In the interim, Claimant filed written application under Rule 34(c) to work Position No. 51 beginning August 2. The Rule provides:

"(c) If a qualified unassigned employee is not available, position will be filled by the senior assigned employee who makes written application therefor and is qualified for such vacancy, and when assigned shall take all of the conditions of the position; if a qualified unassigned employee thereafter becomes available, he may not displace the regular employee filling the temporary vacancy unless he is senior to such regular employee."

On August 1, 2 and 3, there were no qualified unassigned employees available, and Claimant was the senior assigned employee. Claimant was not assigned because Carrier stated that the position was blanked on those days.

On August 4, a qualified, unassigned clerk became available, and was assigned to work the position until the new incumbent was assigned on August 11. The claim is for the period August 2 through August 10 when Claimant should have been assigned to the position.

The Organization does not contest Carrier's right to blank the position. It asserts, however, that Carrier did not, in fact, blank it because the work thereof was distributed to other, on-duty employees.

Carrier conceded that some of the work of Position No. 51 was done by other employees, but not to the extent claimed by the Organization. For example, Superintendent A. W. Kilborn wrote, on November 17, 1961:

"... That work handled by incumbents of other positions August 1, 2 and 3, 1961, consisted of answering phone which incumbent of Position 51 assists these other clerks from 3:00 P.M. to 6:00 P.M., except employee relieving on Position 83, Revising Clerk, August 3, 1961, handled one T.C.F.C. load which consumed about 30 minutes. In addition that other duties assigned to Position 51, including handling transit were left to accumulate during period position was not worked."

Carrier makes two arguments with respect to the work done by on-duty employees: 1. Thirty minutes of work by another employee can hardly be construed as performance of the work of Position No. 51. 2. The work done by other employees was not work which belonged exclusively to Position No. 51.

The evidence is that more than 30 minutes of work was involved. Superintendent Kilborn described it as answering phones from 3:00 P.M. to 6:00 P.M. But, even if it were only 30 minutes, the question remains: who was entitled to perform it, the on-duty employees or the Claimant? Rule 34(c) provides the method of filling a vacant position. While it does not compel Carrier to fill the position, it does provide the order in which employees are to be used to perform that work of the position which Carrier assigned to be performed. It does not matter that only a fraction of the work was done.

The Rule does not provide that a different order be used if only part of the duties of the position are to be assigned. The filling of a position means the appointment of an employee to perform the duties thereof, whether in full or in part. To hold otherwise would permit Carrier to evade the requirements of the Rule by the mere device of assigning less than all the duties thereof. There is no evidence that the parties intended the Rule to be so interpreted.

We have heretofore held that work which is part of a bulletined job had to be assigned according to the unassigned work rule. Awards 5810 (Carter), 6689 (Leiserson), 11604 (Coburn) and 14379 (Wolf).

The other argument, that the work did not belong exclusively to Position No. 51, was discussed in Award 14379. We think the reasoning in that Award is applicable here.

Carrier also argues that because the work did not belong exclusively to Position No. 51, we cannot say it was the work of that position when someone else performs it. The evidence is, however, that the work performed was identified as the work of the position. The Superintendent admitted it. We are not dealing with work which was simultaneously and interchangeably performed by two or more employees, but work which was conceded to be work of the position.

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 13th day of October 1966.