

Award No. 14991

Docket No. CL-15718

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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-5772) that:

(a) The Southern Pacific Company violated the Clerks' Agreement at its Sacramento General Stores when on December 27, 1960, and subsequent dates, it required Mr. R. A. Lobatos, Order Filler, to abandon regular assigned duties in order to perform duties attached to position of Shipping and Receiving Clerk; and,

(b) The Southern Pacific Company shall now be required to allow Mr. R. A. Lobatos eight hours' additional compensation at the rate of Shipping and Receiving Clerk December 27, 1960, and each date thereafter that he is required to perform duties attached to position of Shipping and Receiving Clerk while assigned to position of Order Filler and compensated at the rate thereof.

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.

At the time of this dispute Mr. R. A. Lobatos, hereinafter referred to as the Claimant, was assigned to position of Order Filler at Carrier's Sacramento General Stores, hours 7:00 A. M. to 3:30 P. M., rest days Saturday and Sunday.

From the inception of the Agreement, February 1, 1922, up to the present dispute, it had been the duty of Order Fillers, also called Countermen, Store Attendants, etc., to issue materials over a counter to employees of using

By letter dated September 23, 1961 (Carrier's Exhibit G), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated May 14, 1962 (Carrier's Exhibit H), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner's position in the instant Claim is, as follows: It had been the duty of Order Fillers to issue materials over a counter to employees of a using department on presentation of "4218" requisitions; that all the Order Filler did, in addition, was to circle the amount issued, apply weight, price and price unit, and class; that in the process of removing materials from Stock Shelves Order Fillers visually noted stock situations and, if low, verbally notified Section Stockmen that this was not an assigned duty of Order Fillers but merely an act performed in a friendly spirit of cooperation, as the responsibility for maintaining stocks at proper levels rested solely with Section Stockmen and their assistants; that immediately prior to the presentation of this Claim, the Carrier originated a system of minimum and maximum stock controls and that under this system Order Fillers were required to perform additional duties which properly belonged to Shipping and Receiving Clerks, a higher rated position. Claimant asks that he be reimbursed for the time spent by Claimant in performing work of the higher rated position.

Carrier contends, to the contrary, that the work which Claimant was performing on the date of this Claim was not in any respect that of a Shipping and Receiving Clerk but was work that had always been done by an Order Filler only under a different method; that it had always been the Order Filler's responsibility to advise responsible people as to the stock situation when he was filling orders; that, under the prior method, he accomplished this through direct oral communication with a Section Stockman but that now it was and is done by indicating stock situations with red flags and stock situation cards, and that there is no basis for this Claim.

The rule of the agreement with which we are presently concerned is:

"RULE 7.

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

In a determination of the issues there are two questions that we must direct our attention to. The first one is: "Did Claimant fulfill, temporarily, the duties and responsibilities of a higher rated position?" Secondly: "If so, what was the extent of time occupied by Claimant in the performance of the higher rated position?"

Petitioner has the laboring oar in replying to both of these inquiries. As to whether or not Claimant temporarily fulfilled the duties and responsibilities of the higher rated position there is a conflict between the parties which leads to some confusion. Though there was a change of method in the performance of some of the work it is questionable whether the work required of the Order Filler was that of Shipping and Receiving Clerk. This cannot be satisfactorily

determined from any competent evidence adduced in the record. Relative to the second question as to the amount of time spent by Claimant on the higher rated position, there is no proper criterion upon which a decision might be reached as to the amount of time Claimant alleges to have spent at the higher rated position.

It would appear that what Petitioner is really urging is the uprating of the Order Filler's job; consequently, whether or not the job should be uprated is one for negotiation on the property.

From a review of the entire record we are convinced that Petitioner has not sustained the burden of proof required by this Board in numerous awards in support of this Claim. In accordance with the views expressed in this Opinion we feel that the Claim should be dismissed.

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

We cannot find from the record that the Agreement has been violated.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 2nd day of December 1966.