

Award No. 16128
Docket No. CL-16397

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

**MISSOURI PACIFIC RAILROAD
(Gulf District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6053) that:

1. The Carrier violated the Clerks' Agreement beginning January 4, 1965, when it withheld Mr. D. K. Tatum from his regularly assigned position of General Clerk No. 1610 and required him to work position of Claim Clerk No. 1609.

2. Mr. Tatum be paid an additional \$22.07 each day he was withheld from his regularly assigned position.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. H. Kindle is regularly assigned to Claim Clerk No. 1609 with assigned duties — "Make OS&D reports, bill and report all salvage, relieve in warehouse." (Employees' Exhibit No. 1.) The work involved in Claim Clerk No. 1609 duties consists mostly of handling salvage and the paper work pertaining thereto, also the answering of correspondence pertaining to claims.

Mr. Tatum is regularly assigned to General Clerk No. 1610 with assigned duties — "Make OS&D reports and inspection, check loading at docks and assist in warehouse. (Employees' Exhibit No. 2.) The work involved in General Clerk No. 1610 duties consists mostly of making outside inspections on carload damaged freight at consignees' place of business. (Employees' Exhibits Nos. 3 and 4.)

Beginning January 4, 1965, due to Mr. Tatum's experience and skill in handling salvage and correspondence, he was required to vacate his regularly assigned position of General Clerk No. 1610 and required to work position of Claim Clerk No. 1609.

Beginning on the same date Mr. Kindle was required to vacate his regularly assigned position No. 1609 and worked position No. 1610.

In view of these facts, claim is without merit or rule support and is respectfully declined.

Yours truly,

/s/ B. W. Smith"

12. Carrier refused payment as requested because the Carrier may properly assign lower rated work to a position temporarily, so long as the higher rate of the position is allowed, in accordance with Rule 50(a) quoted in part above.

13. Claim was progressed in the proper manner on the property and has now been progressed to your Board.

OPINION OF BOARD: In its original letter of claim, and throughout this case, Brotherhood asserted that Claimant was not being permitted by Carrier to work his position, No. 1610, and that he was being required to work Position No. 1609; these are the alleged facts on which the Claim before us rests.

In its first declination of the Claim Carrier asserted that investigation developed that Claimant was performing duties within the assigned duties of his position (No. 1610), and Carrier declined the Claim for that reason; Carrier maintained this rebuttal throughout the proceedings in this case. In the face of this challenge, Brotherhood failed in the record to present evidence adequate for us to find that Claimant was in fact withheld from his regularly assigned 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 did not violate the Agreement.

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 March 1968.

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