

Award No. 16852

Docket No. CL-16481

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6021) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it required Messrs. George Cheney, T. E. Barksdale, W. B. Duke and H. W. Miller, from the Claim Section of the Rate Department; Messrs. B. F. Rogers, W. F. Stevenson and G. T. Wade, from the Forwarded Section of the Rate Department, and Mr. D. H. Hill, from the Tariff Bureau, to suspend their regular work during the regular office hours and assist in the closeout of Southern Railway's Received Section of the Rate Department.

(b) The following employees shall be compensated at the time and one-half rate of the daily rate of \$22.75 per day, for the additional time claimed as follows:

George Cheney	18 hours 15 minutes
T. E. Barksdale	10 hours 15 minutes
W. B. Duke	18 hours 15 minutes
H. W. Miller	18 hours 15 minutes
B. F. Rogers	18 hours 30 minutes
W. V. Stevenson	8 hours 0 minutes
G. T. Wade	18 hours 15 minutes
Dan Hill	17 hours 30 minutes

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimants in this case holds position and the Southern Railway Company.

Chairman, Protective Committee, Mr. E. E. Yancey, filed the initial claim in this case on January 27, 1965, Employees' Exhibit A and stated:

"RULE 29.
AUTHORITY FOR OVERTIME
(Effective June 1, 1921.)

No overtime hours will be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable."

"RULE 30. ABSORBING OVERTIME
(Effective June 1, 1921.)

Employees will not be required to suspend work during regular hours to absorb overtime, except as otherwise provided in Rule 26."

OPINION OF BOARD: The Claimants, in this dispute are a part of a force of 74 Rate Clerks in the Carrier's Rate Department of the Office of Director, Revenue Accounting (Freight Accounting) at Atlanta, Georgia. It appears, from the record, that they are all clerks in the Rate Department; are all in a common seniority district; all work the same hours — 8:15 A. M. to 4:45 P. M., Monday through Friday with rest days of Saturday and Sunday.

Under date of January 27, 1965, the Brotherhood, on behalf of the named Claimants, filed a claim with the Carrier claiming a violation of the Agreement between the parties when it required the named Claimants to suspend their regular work during the regular office hours and assist in the close-out of the Carrier's Received Section of the Rate Department.

This claim has been handled in the usual manner up to and including the highest officer of the Carrier and has been denied.

When this dispute was being handled on the property and in its submission to this Board, the Brotherhood, on several occasions makes reference to Docket CL-15786 which was pending before this Board and undecided. Claim CL-15768 was originally filed with the Carrier under date of November 9, 1963.

We have examined the record in Docket No. CL-15786 and find that dispute involved the same Claimants involved in this dispute, although not specifically named; involved the same positions as involved in this dispute and in the same office of the Carrier.

The original claim submitted on the property in CL-15786 under date of November 9, 1963, reads as follows:

"Claim and grievance is filed for and in behalf of seventy-five (75) Rate Clerks in the Rate Department, Revenue Accounting, account of their positions being abolished and recreated at the same rate of pay which is \$22.75 per day, with the same qualifications and duties. Claim is filed for the difference of \$22.75 per day and \$22.99, which is the highest rate of pay.

* * * * *

Please advise when claim will be paid and the seventy-five (75) Rate Clerks restored to their former status, or your reason for declining at your earliest possible convenience."

The claim submitted to this Board in CL-15786, reads as follows:

"The Carrier violated the provisions of the Clerks' Agreement and deprived the employees involved of a portion of the rights which accrue to them with the accumulation of seniority when it did unilaterally, effective November 15, 1963, abolish 75 Rate Clerk positions in the Rate Section of the Freight Accounting Department, the occupants of which were assigned distinct and accurately defined duties; and re-established 73 Rate Clerk positions with one rate of pay and identical preponderating duties.

The Carrier shall now be required to correctly describe by appropriate bulletin the applicable preponderating duties of each of the 73 Rate Clerk positions as required by our Agreement Rules."

The claim submitted to this Board in CL-15786 was dismissed by our Award 15449 (Dorsey) under date of March 31, 1967, on a finding "That the Claim submitted to the Board is not the claim processed on the property and therefore it must be dismissed."

A reading of the record, in this dispute, discloses that the contention of the Brotherhood is dependent on our decision of the claim submitted in Docket CL-15786 — Award 15449. This is borne out by the following statements, in the record, of the Brotherhood, as follows:

"Until your Honorable Board reports its finding and gives a decision in Docket CL-15786, it was necessary to file and progress the instant claim * * *."

* * * * *

"Until the National Railroad Adjustment Board renders their decision in the case before them it is necessary that these claims be filed."

* * * * *

"A claim was filed and progressed to the highest officer on the property, who was not agreeable to settling that dispute, which necessitated the Ex Parte Submission, Docket CL-15786, that is now pending before your Honorable Board for decision. THE OUTCOME OF THE INSTANT CLAIM WILL HINGE GREATLY ON YOUR DECISION IN DOCKET CL-15786 as to whether the Carrier has the right to pool positions in a department despite the fact that they still have distinct and separate duties to perform." (Emphasis ours.)

The question presented for decision to the Board in CL-15786 — Award 15449 was stated by the Brotherhood, as follows:

"The question to be decided in this case is whether or not the Southern Railway violated our Agreement rules and deprived the employees involved of a portion of the rights which accrue to them with the accumulation of seniority when it did, effective November 15, 1963, abolish 75 Rate Clerk positions with distinct and accurately defined preponderating duties and readvertised 73 of these Rate Clerk positions all with identical preponderating duties."

This Board, in Award 15449, having dismissed the claim presented under Docket No. CL-15786, the question arises as to what effect that Award has on the present dispute.

The dismissal, whether it was proper or not, was a final determination and a final disposition of the claim insofar as it concerns us in the dispute before us. Award 15449, dismissing the claim, in effect, holds that the Carrier did not violate the Agreement, as claimed by the Brotherhood, when it abolished the 75 Rate Clerk positions with distinct and accurately defined preponderating duties, effective November 15, 1963, and thereafter readvertised 73 of these Rate Clerk positions all with identical preponderating duties. The Award placed the parties in the same position they were in prior to the filing of CL-15786.

In the dispute before us, the named Claimants involved, who were also Claimants involved in CL-15786, although not specifically named, claim a violation of Rule 30 of the Agreement, on the various dates in 1965 set forth in the claim which dates are approximately 14 months after the Carrier abolished the 76 Rate Clerk positions and readvertised 73 of these positions, in that they were required "to suspend their regular work during the regular office hours and assist in the close-out of Southern Railway's Received Section of the Rate Department."

The Carrier denies the contention of the Brotherhood. It contends that in the office in question there are 74 positions, including those occupied by the Claimants; that they all have the title of Rate Clerk; that they all have the following identical bulletined preponderating duties, as follows:

"To perform, as directed, all necessary freight rate and divisional functions associated with the Accounting Department.

Requirements are a thorough understanding of the application of freight tariffs and divisional issues effective with all line and in all territories. A familiarity with lines and roads and practices of Carriers, also a knowledge of the application of Railway Accounting Rules is essential."

The record, in this dispute, discloses that when it was being handled on the property, the representatives of the Carrier in denying the claim stated as follows:

Mr. J. B. Tolling, Director, Revenue Accounting, in his letter of March 22, 1965, among other things, stated:

"These clerks, along with all other senior clerks in this department, work under a common bulletin, with a common rate of pay * * *"

Mr. G. H. Keller, Assistant Comptroller, in his letter of May 31, 1965, among other things, stated:

"These clerks, along with other senior rate clerks, work under a common bulletin with a common rate of pay."

Mr. J. W. Staley, Assistant Director of Labor Relations, in his letter of September 17, 1965, states among other things, as follows:

"All the service they performed on the three dates was work properly required of them in accordance with their bulletined preponderating duties."

Mr. J. W. Staley, Assistant Director of Labor Relations, in his letter of April 18, 1966, states among other things, as follows:

"As previously pointed out, none of the claimants were required to suspend work during regular hours to absorb overtime. No overtime work would have been required or performed by anyone in any event. Also, the work performed by claimants was strictly in accordance with their bulletined preponderating duties — it was not work assigned specifically to other rate clerks."

The Brotherhood, in its Ex Parte Submission, in support of its contention, states as follows:

"The same views expressed by the the Carrier representatives in their declination letters were made possible, only, after November 15, 1963, when Carrier abolished 75 Rate Clerk positions and readvertised 73 of them with identical preponderating duties. Prior to November 15, 1963, the 'Rate Clerk' positions were assigned distinct and accurately defined duties. This organization, in that case, vigorously protested the Carrier's action as being **improper**. We have an Ex Parte Submission, Docket CL-15786, which is pending before the Third Division, National Railroad Adjustment Board.

Until your Honorable Board reports its findings and gives a decision in Docket CL-15786, it was necessary to file and progress the instant claim since we contend the Carrier's action was **improper** and the condition prior to November 15, 1963, still exists."

It is evident from a reading of the statement of the Brotherhood, just quoted, that the Brotherhood concedes that it was possible for the Carrier to require the Claimants to perform the services they did perform on the dates set forth in the claim if it is determined by this Board in CL-15786 that the Carrier **did not violate** the Agreement when it abolished the 75 Rate Clerk positions as of November 15, 1963, and readvertised 73 of the positions with identical preponderating duties.

Based on our Award 15449, dismissing CL-15786, we are constrained to hold that the Carrier did not violate the Agreement when it abolished the 75 Rate Clerk positions as of November 15, 1963, and readvertised 73 of the positions with identical preponderating duties, and required the Claimants to perform the services they did perform on the date set forth in the claim, during

their regular hours and were not required to suspend work during their regular hours.

We hold that Award 15449, dismissing CL-15786, is controlling with respect to our determination of this dispute.

We are constrained to deny the claims.

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 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 was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1968.