



Award Number 17767

Docket Number CL-17908

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6500) that:

- (1) Carrier violated the Clerk's current Agreement when it instructed and required the occupant of Demurrage Clerk No. 57 position to suspend work on his assigned position and perform work of the Car Clerk No. 29 position between 11:00 A.M., and 12:00 Noon, each day, Monday through Friday.
- (2) (a) Car Clerk No. 29, H. G. Snider, be paid for an additional hour's time at the time and one-half rate for August 17, 1967, and that he or his successor, or successors, be paid likewise for each subsequent day of the violation, Sunday through Thursday of each week and;

(b) The occupant of the Relief Clerk Position RC-2 be paid for an additional hour's time at the time and one-half rate of the Car Clerk No. 29 position for August 18, 1967, and that he or his successor, or successors, be paid likewise for each subsequent day of the violation on Fridays and Saturdays of each week, until the violation is corrected.
- (3) Demurrage Clerk T. J. Satterwhite be paid the difference in rates of pay between that of Car Clerk and that of Demurrage Clerk for one hour August 17, 1967, and that he or his successor, or successors, be paid likewise for each subsequent day the occupant of the Demurrage Clerk position is required to suspend work on his position and relieve on the Car Clerk position until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The facts, as we understand them to be, are as follows:

Carrier's Miller Freight Station and Miller Yard Office are both located in the same building and in the same room. The Freight Station, or Freight Office, occupies one side of the room and the Yard Office occupies the opposite side of the room. The Freight Office is under supervision of the Local Freight Agent and the Yard Office is under supervision of the Yardmaster.

There are two Car Clerk positions in the Freight Office under the jurisdiction of the Local Freight Agent, one identified as Car Clerk No. 29 and the

effective April 1, 1946, reprinted January 1, 1963, copy of which is on file with the Board.

(Exhibits Not Reproduced)

OPINION OF BOARD: The two separate claims which were initially presented on the property were consolidated for handling before they reached this Board. For the purposes of this opinion, however, they must be taken up separately.

Briefly stated, the facts were these: Claimant No. 1, who held Car Clerk position No. 29, worked an eight-hour day and ate lunch between 11:00 A.M. and 12:00 Noon each day. On August 17, 1967, Carrier requested Claimant No. 2, who held Demurrage Clerk position No. 57, to protect Claimant No. 1's position during No. 1's lunch hour.

Employees base their claim for time and one-half for Claimant No. 1 (as well as, time and one-half for the occupant of the relief position for Car Clerk No. 29) on the allegation that Carrier violated the Agreement by ordering the Demurrage Clerk to protect Claimant No. 1's position during his lunch break instead of allowing Claimant No. 1 to work on through, thereby gaining the overtime. They rely on two provisions of Rule 30, set out below:

"RULE 30

Meal Period

* * * * *

"30-2. For regular operations requiring continuous hours, eight (8) consecutive hours, without meal period, may be assigned as constituting a day's work; twenty (20) minutes without deduction in pay shall be allowed to the employees within which to eat within the time limits specified in paragraph 30-1.

* * * * *

"30-4. If the meal period is not afforded within the allowed or agreed time limit and is worked, such portion of the meal period worked will be paid for on the minute basis at the rate of time and one-half and twenty (20) minutes without deduction in pay will be allowed in which to eat at the first opportunity."

Employees further allege a violation of Rule 32-10, which reads: "Employees will not be required to suspend work during regular hours to absorb overtime." They further cite Award 420 as a controlling precedent.

As to Claimant No. 1 (and the occupant of the relief position thereof), we find this claim should be dismissed because Employees did not sustain their burden of proof that the Agreement had been violated. Award 420 is distinguishable from the instant case, because the Agreement there carried a specific prohibition against a similar fact situation. Rule 30-2 and 30-4 merely allows a position to be worked eight (8) consecutive hours and provides for meal times when possible at higher rates of pay. It in no way directs nor prohibits Carrier from handling the lunch hour in any reasonable manner, especially as it handled the lunch hour in the instant case. Employees also failed in their burdens to bring Claimant No. 1 under Rule 32-10, since they did not allege nor prove whether Claimant No. 2 completely suspended his other activities nor how many hours Claimant No. 2 worked. This Board,

as we have said many times, will not construe something into an Agreement which is not patently there—a provision which both parties should have or could have negotiated therein.

Employees base their claim for Claimant No. 2 (Demurrage Clerk) on Rule 40-1, which provides: "Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions . . ." We think this portion of the claim, as to Claimant No. 2, must be sustained because Employees did sustain their burden of proof, and we think Carrier so admitted when it stated: "In order to provide better service to its customers, Carrier instructed the Demurrage Clerk to answer the telephone on the Car Clerk's desk and take car orders during the Car Clerk's assigned meal period." (Emphasis ours.) This Board finds that Employees sufficiently sustained their burden of proof as to Claimant No. 2 so as to award him the difference in the rates of pay between the two positions for that one hour he worked from August 17, 1967, until corrected.

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 Agreement was not violated insofar as Claimant No. 1, but was violated insofar as Claimant No. 2, in accordance with the Opinion.

A W A R D

Claim dismissed in part and sustained in part as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1970.