

Award No. 18645
Docket No. CL-19070

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY
(South-Central District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6894) that:

1. The Carrier violated the then currently effective and controlling agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Union Pacific Railroad Company when, on Saturday, October 4, 1969 need arose for the performance of revenue billing on seven (7) carloads of limestone, a duty performed exclusively by Mr. B. J. Petty, the incumbent of the position of Cashier at Provo, Utah, during his regular work week; instead, Carrier chose to utilize the services of Relief Clerk who, on the date in question, was relieving the position of Chief Crew Dispatcher-Car Clerk in the Provo Yard Office.

2. Carrier shall now be required to make Mr. B. J. Petty whole by compensating him for wage loss suffered due to the mishandling on the part of the Carrier in the amount of five (5) hours and twenty (20) minutes at the time and one-half rate of pay of the position of Cashier, which has a monthly rate of \$665.82 per work day month.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. B. J. Petty, was, at the time the claim arose, in the employ of the Carrier at Provo, Utah, in the capacity of Cashier in the Provo, Utah Freight Station, a position coming under the agreement between the Brotherhood of Railway, Airline and Steamship Clerks and the Carrier, which he held by virtue of his seniority date of August 1, 1919 on Consolidated Clerks' Roster No. 81-1.

On October 4, 1969, need arose for the performance of revenue billing on seven (7) carloads of limestone. On this date, Mr. B. J. Petty, incumbent of the position of Cashier, was observing one of his days of rest. During his regular work week, Mr. Petty, the Cashier at Provo, Utah, exclusively performs all billing at that point.

CARRIER'S EXHIBIT B: Agent Rowberry's letter of October 7, 1969, denying the claim.

CARRIER'S EXHIBIT C: Claimant Petty's letter of October 7, 1969, in rebuttal to Agent Rowberry's denial.

CARRIER'S EXHIBIT D: Local Chairman's letter to Carrier's first officer of appeal, dated October 14, 1969.

CARRIER'S EXHIBIT S: Carrier's declination of claim as appealed, dated November 18, 1969.

CARRIER'S EXHIBIT F: Local Chairman's notice of November 21, 1969, of intention to appeal the claim further.

CARRIER'S EXHIBIT G: General Chairman's letter of December 17, 1969, appealing the claim to Carrier's highest officer of appeal.

CARRIER'S EXHIBIT H: Carrier's declination of claim, dated February 9, 1970.

CARRIER'S EXHIBIT I: General Chairman's letter dated February 16, 1970, requesting conference.

CARRIER'S EXHIBIT J: Carrier's letter of February 24, 1970, agreeing to conference.

CARRIER'S EXHIBIT K: Carrier's letter of April 7, 1970, reiterating its denial of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 4, 1969, while Claimant was observing one of his rest days, Carrier instructed a relief clerk to bill seven carloads of limestone on revenue billing. The Organization contends that the involved work was the exclusive work of Claimant, and that, therefore, Claimant should have been called in from his rest day to perform this work. Carrier denies this contention, and alleges that "revenue billing" is not a specialized activity, but is one of several duties performed by Claimant; that "revenue billing" has in the past been performed by other than occupants of Claimant's position (Cashier-Clerk); and that none of the existing rules confer exclusivity of this work on Claimant's position. In this dispute, the Organization has the burden of proving by probative evidence that: (1) Claimant had exclusive right to perform the involved work of "revenue billing"; (2) that the Chief Crew Dispatcher-Car Clerk, or his relief, did not perform "revenue billing" incidental to the performance of their normal duties; and (3) that the relief clerk, who was relieving the position of Chief Crew Dispatcher-Car Clerk, was forced to suspend work on his relief position to perform the disputed "revenue billing". The Organization has failed to sustain their burden. Exclusivity of the involved work was never proven by Claimant. There is absence of any proof supporting the naked allegations of the Organization that the Chief Crew Dispatcher-Car Clerk did not at any time perform "revenue billing" in the performance of and incidental to his regularly assigned duties; in fact, the only probative evidence touching on this question is to the contrary (see admission of Claimant found on page 22 of record).

Also, the record is void of any evidence that the Relief Clerk relieving the position of Chief Crew Dispatcher-Car Clerk was forced to suspend work on his position to perform the duty of "revenue billing", in order to absorb overtime. See Award 18455 (Rosenbloom).

Therefore, the Organization having failed to sustain its burden of proof, this Claim will be denied.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1971.