

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22760  
Docket Number **CL-22820**

Martin F. **Scheinman**, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employes**

**PARTIES TO DISPUTE:** (

(Missouri-Kansas-Texas Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8780) that:

(1) Carrier violated the Rules Agreement between the parties, including but not limited to **Rule 60 of DP-451** when on January 29, 1978 it required Mr. B. A. Bailey, Clerk, Eureka Yard, Houston, Texas, while working Chief Cotton Clerk Position No. 4957 to suspend service on that position and perform duties assigned to the higher rated Position of Joint **Demurrage** Clerk No. 10074.

(2) Carrier shall compensate Mr. Bailey the difference in pay between that of Chief Cotton Clerk Position No. 4957 to Joint **Demurrage** Clerk Position No. 10074 for January 29, 1978.

**OPINION OF BOARD:** **B. A. Bailey**, Clerk, was the regular assigned occupant of the Swing "A" Position at the Eureka Yard in Houston, Texas. On Sunday, **January 29, 1978**, Claimant was assigned to Chief Cotton Clerk Position No. 4957, hours from 8:00 A.M. to **4:45 P.M.** **Claimant** was directed to prepare and **mail** Constructive Placement Notices on carloads of wheat and sorghum held in Carrier's Yard. It is undisputed that **Claimant** performed these duties on January 29, 1978.

The Organization claims that Constructive Placement Notices work is regularly performed by the occupants of the **Demurrage** Clerk Positions No. 10074 and 10075. They work Monday through Friday. It insists that the duties of Position No. 4957 do not include preparing or handling Constructive Placement Notices. The Organization contends that **Claimant** was required to suspend service on Position No. 4957 and perform duties regularly assigned to the **Demurrage** Clerks. It asks that Claimant be compensated at the higher **Demurrage** Clerk rate for January 29, 1978.

Carrier argues that it has not violated the Agreement. Carrier claim **that** the duties in issue are not exclusively assigned to **Demurrage** Clerks. It asserts that Constructive Placement of grain cars has consistently been performed by other clerical positions when Positions No. 10074 and 10075 **have** not been on duty. Carrier also contends that constructive placement is a duty incidental and part of Claimant's bulletined **assignment**.

Carrier introduced no evidence whatsoever to support its assertion that other clerks had customarily performed constructive placement. **That** is, Carrier failed to furnish any evidence to indicate that **other** clerks perform the disputed work when Positions No. 10074 and 10075 are not **on** duty. Carrier's contention as to the practice with regard to constructive placement must be rejected.

Carrier argued that the General Description of Duties for Swing "A" position permits "miscellaneous duties as assigned." In its view, constructive placements are part of the bulletined assignment. The Organization responds with the Bulletin for Position No. 4957, Chief Cotton Clerk, insisting that there is no **mention** of handling Constructive **Placement** Notices.

Even assuming that the constructive placement assignment is not part of the duties of Position No. 4957 as is asserted by the Organization, this does not necessarily warrant paying, under Rule 60, **the** higher **Demurrage** Clerk rate. **Rule** 60 states:

**Employees** temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions for four (4) hours or less; if held **on** such position in excess of four (4) hours, **employees** will receive a **minimum** of eight (8) hours at the higher rate. **Employees** temporarily assigned to lower rated positions shall not **have** their rates reduced.

It is not essential for an **employee** to perform all duties and responsibilities of a higher rated position to qualify for compensation at the higher rate. Neither must the **employee assume** all the work involved. See Awards 16461, 14681, 12088, 11981, 9842, 6965, 4669. **However**, we conclude that **Rule** 60 contemplates that there be substantial fulfillment of the position or work in **order** to collect the higher rate of **pay**. See Awards 20478, 16828, 16536, 15629, 14490, 10912. That is,

the burden of proof lies with Claimant to show that he substantially fulfilled the **Demurrage** Clerk duties on January 29, 1978. The record is silent as to the amount of *time* spent **doing constructive placements** on January 29, 1978. Moreover, no evidence was introduced to indicate the **extent** to which *Claimant* performed any other Demurrage Clerk duties other than the disputed constructive placements. Therefore, we must conclude that Claimant failed to sustain this burden. As such, we will deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 **Carrier did** not violate the Agreement.

A W A B D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.