

Award No. 10811
Docket No. CL-10625

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that,

(a) The Carrier violated the Agreement when, at Atlanta, Georgia, in the office of Agent, it improperly paid Clerk P. H. Browning for filling two positions on April 9, 1957, and failed to afford Clerk H. E. Hogg preference to work the position of "Utility Clerk" to which he was entitled and for which he was available.

(b) Claimant P. H. Browning shall now be paid for the difference between what he was paid and eight hours at time and one-half \$16.96 per day plus eight hours at pro rata rate of \$16.96 per day for April 9, 1957, in addition to all other earnings; and Mr. H. E. Hogg shall now be additionally compensated for April 9, 1957, one day at time and one-half the rate of \$16.96 per day.

EMPLOYEES' STATEMENT OF FACTS:

1. There are three positions involved in this dispute,

- Viz: (A) Utility Clerk — P. H. Browning, Hours 8:00 A. M. to 5:00 P. M. Meal period 12:00 Noon to 1:00 P. M. Work Week — Monday through Sunday; Rest Days — Saturday and Sunday. Rate of Pay — \$16.96 per day.
- (B) Relief Clerk — C. V. Goolsby, Work Week — Saturday through Friday; Rest Days — Thursday and Friday; Relieves as follows: Saturday — Rate Clerk at Chevrolet Plant 7:30 A. M. to 4:30 P. M. Meal period 12:00 Noon to 1:00 P. M. Rate \$17.43 per day.

Sunday: Collector 8:30 A. M. to 5:30 P. M. Meal period 12:00 Noon to 1:00 P. M. Rate \$16.62 per day.

Monday: Bill of Lading Clerk 8:00 A. M. to 5:00 P. M. Meal period 12:00 Noon to 1:00 P. M. Rate \$17.43 per day.

filling during the absence of the regular occupant. However, in the case covered by Docket CL-10073, Mr. Hughes (the employe who filled the vacancy and made the overtime) is the only claimant involved and the claim is that by working two hours' overtime on one day he "doubled" and should have been paid as though he had worked sixteen hours. In the case now before the Board, the claim is not only that Mr. Browning be paid as though he had worked sixteen hours on April 9 but also that another clerk, Claimant Hogg, be paid an additional eight hours at time and one-half rate, alleging that he should have been used instead of Mr. Browning.

Mr. Browning was properly designated and used to fill the five-day vacancy. He was properly compensated for all time worked by him while filling that position. With respect to the second part of the double penalty claim, the agreement does not afford Mr. Hogg or any other regularly assigned clerk any claim to short vacancies in other assignments, either in addition to his own assignment or in lieu of his own assignment. Rule 17 plainly specifies that such vacancies may be filled at the discretion of the officer in charge. Rule 17 of the revised agreement was formerly Rule 5 (d). In Award 4533 (Clerks-Southern) the Board said:

"It is clear to us that under Rule 5 (d) the Carrier can fill temporary vacancies occasioned by leaves of absence or sick leave, or it may blank them, as it sees fit. The note attached to the rule permits the Carrier to use its own judgment as to the employe to be used in case it elects to fill the vacancy, except that it must be an employe holding seniority in the class or group in which the vacancy occurs, or an employe in another group or class who also has seniority in the class or group where the vacancy existed. There is no requirement in this rule that the senior employe is to be assigned; in fact, the inference is that he need not be."

For the reasons stated herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

All pertinent facts and data used by the carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between the Grand Lodge Brotherhood of Railway and Steamship Clerks and the Southern Railway Company.

On April 9, 1957, C. V. Goolsby regularly assigned occupant of position of Relief Clerk was on vacation. His assigned hours were 2:00 P. M. to 10:30 P. M. with a thirty minute meal period. Claimant Browning was regularly assigned to position of Utility Clerk. His hours were 8:00 A. M. to 5:00 P. M. with one hour lunch period.

Claimant Hogg was regularly assigned to the position of Relief Clerk.

On the day in question Claimant Browning was assigned to the position held by Goolsby. In addition he was ordered to report to work his former position from 8:00 A. M. to 2:00 P. M. For this service Browning was paid eight hours at the per rata rate of Goolsby's position plus six hours at time and one-half the rate of the position of Utility Clerk. Claimant Browning contends that he was filling both positions and that he should be paid eight hours pro rata rate of Relief Clerk position and eight hours at time and one-half of the Utility Clerk position.

Claimant Hogg contends that he was entitled to fill the position vacated by Browning because Browning was not available (because he could not work the full eight hours).

Carrier contends that it was giving Claimant Browning an overtime call. It further contends that Claimant Hogg was not entitled to the call.

Let us first apply ourselves to the Browning claim. Claimant Browning worked five hours of an eight hour position. Since Claimant worked more than half of the work day, we are of the opinion that he is filling that position and entitled to be paid for eight hours. This award can be distinguished from Award 10351 for in that case worked less than a majority of the time of the position.

We believe Rule 27(d) controlling and that Claimant Browning is entitled to the difference as stated in his claim.

“Rule 27(d) — When regularly assigned employees are required to work more than one shift in continuous service on two different positions, they will be paid time and one-half for service performed on the second position at the rate of pay applicable to such second position except that, if the second position is on their own seniority district, and they are required by the carrier to double, they will be paid time and one-half at their own rate if higher than the rate of the second position.”

This necessarily disposes of the claim of Hogg. Certainly, the Carrier had the right to use Browning. Claimant Hogg was not entitled to fill the position.

For the foregoing reasons, we believe there was a violation of the Agreement.

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 with 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 has been violated.

AWARD

Claim sustained as to Claimant Browning. Claim denied as to Claimant Hogg.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of September 1962.