

Award No. 13679

Docket No. CL-13596

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD — SOUTHERN DISTRICT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5250) that:

(1) Carrier violated the current Clerks' Agreement at Mattoon, Illinois on Sunday, August 6, 1961, when it called Mr. A. A. Weigand, regularly assigned Crew Dispatcher, Position No. 51, on his assigned rest day to perform service on position of Crew Dispatcher, Position No. 53, and failed to accord him payment at the time and one-half rate of his regular assignment.

(2) Mr. A. A. Weigand shall now be compensated eight (8) hours' pay at time and one-half rate of his regular position of Crew Dispatcher, Position No. 51, performed on Sunday, August 6, 1961, less the amount he has actually been paid for that date.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. A. Weigand is regularly assigned to first trick Crew Dispatcher, Mattoon, Illinois, Position No. 51. Workweek—Monday through Friday. Hours of Service—8:00 A. M. to 4:00 P. M. Rate of Pay \$19.688 per day. Rest Days—Saturday and Sunday.

On Sunday, August 6, 1961, there was a vacancy on Position No. 53, Crew Dispatcher. Hours of Service—4:00 P. M. to 12:00 Midnight. Rate of Pay—\$19.052 per day. There was no extra employee available for service necessary to be performed on Position No. 53, Crew Dispatcher. Consequently, Carrier called claimant Weigand who responded to the call and worked eight (8) hours in performing the duties of Crew Dispatcher Position No. 53. Claimant was compensated for eight (8) hours at time and one-half rate of Position No. 53.

Inasmuch as claimant was regularly assigned to Position No. 51, Crew Dispatcher paying a higher rate of pay than Position No. 53 on which he was used on Sunday, August 6, 1961 and the agreement does not contemplate the employee's regular assigned rate of pay being reduced in such circumstances, claimant filed time claim under date of August 7, 1961 requesting he be paid time and one-half his regular rate of Crew Dispatcher on August 6, 1961.

This conclusion is fully substantiated by facts and evidence hereinbefore presented, Awards cited and exhibits attached.

Claim is without merit and only a denied award can follow.

(Exhibits not reproduced).

OPINION OF BOARD: As of August 6, 1961, the date of the incident on which the instant claim is based, Claimant Weigand was regularly assigned as Crew Dispatcher 8:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday, rate \$19.688 per day. There was also a Crew Dispatcher assignment at the same point working 4:00 P. M. to midnight Wednesday through Sunday, rest days Monday and Tuesday, rate \$19.052 per day; both assignments being filled on rest days by a regularly-assigned relief man.

On August 6 (Sunday—one of the Claimant's rest days), the regularly-assigned second-trick crew dispatcher was unable to protect his job. As no extra or furloughed employe was available who had not worked forty hours during the week, Claimant was called, in line with the Memorandum of Understanding hereinafter quoted, and worked the vacancy. He was paid for this tour of duty time and one-half on the basis of the \$19.052 rate (\$28.58). Claim that Crew Dispatcher Weigand should have been paid time and one-half on the basis of his 8:00 A. M.—4:00 P. M. Monday through Friday assignment (\$29.53) was progressed on the property and denied at the various supervisory levels in accordance with current schedule rules.

Rule 25 provides:

"RULE 25

"PRESERVATION OF RATES

"Employes temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment."

This type of claim has been considered by this Board before. In Awards 3413, 4469, 5924 and 9106 the claim was sustained and we agree with these awards. Rule 25 is clear.

The Carrier contends the Memorandum of Understanding of March 21, 1955, is pertinent but we do not find that the Memorandum of Understanding established rates of pay. The Memorandum is as follows:

"In the event a regularly assigned relief employe, cannot, for some reason or other, relieve on a clerical position included in his regular relief assignment on a day he is assigned to do so, the service on that day shall be protected as follows with preference in the order shown:

"(a) by a qualified available extra or furloughed employee who has not had forty (40) hours of work in his work week;

"(b) by the employee assigned to the position being relieved, if available;

"(c) by the senior qualified available employee on the seniority roster at the point of the vacancy desiring the work. At large terminals employees desiring such work will be required to file their name, address and telephone number with the Agent indicating the location or locations at which they will accept short vacancy work.

"In the event a regularly assigned clerical employee is unable, for some reason or other, to report for duty on one of his regularly assigned working days, the service on that day shall be protected as follows with preference in the order shown:

"(a) by a qualified available extra or furloughed employee who has not had forty (40) hours of work in his work week;

"(b) by the senior qualified available employee on the seniority roster at the point of the vacancy desiring the work. At large terminals employees desiring such work will be required to file their name, address and telephone number with the Agent indicating the location or locations at which they will accept short vacancy work."

The Carrier claims that one who volunteers under the Memorandum of Understanding takes subject to the pay of the job for which he volunteered. Awards 2670, 2672, 12646 and others support the Carrier. We do not find any merit to the "volunteer" theory. Such a theory is contrary to the existence and philosophy of a collective bargaining agreement. If the terms of a collective bargaining agreement specify the rate of pay neither the employee or the Carrier nor both can avoid the collective bargaining agreement by the Carrier offering to accept volunteers who shall be paid in conflict with the agreement.

To volunteer is to offer. The assignment creates the employer-employee relationship. The contract creates the right to compensation and the rate of compensation. The compensation accrues when an employee is assigned or is entitled to be assigned.

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 has been violated.

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AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1965.