



Award No. 14332

Docket No. CL-15292

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5696) that:

1. Carrier violated the Clerks' Rules Agreement at Nahant, Iowa, when it called an employee to fill a temporary vacancy on a regularly assigned position and reduced its hours to less than eight for that day.

2. Carrier shall now be required to compensate employee J. V. Crisci at the overtime rate of Yard Clerk Position No. 2550 for an additional four (4) hours on each of the following days:

January 28th and 30th, 1964.

EMPLOYEES' STATEMENT OF FACTS: At Nahant, Iowa, the Carrier maintains three yard clerk positions identified as Yard Clerk Position Nos. 2550, 2551 and 2552.

Employee R. A. Tubbs is the regular occupant of Position No. 2550 and is assigned from 7:30 A. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday rest days.

Employee J. V. Crisci is the regular occupant of Position No. 2551 and is assigned from 3:30 P. M. to 11:30 P. M., Tuesday through Saturday, with Sunday and Monday rest days.

Employee F. K. Cox is the regular occupant of Position No. 2552 and is assigned from 11:30 P. M. to 7:30 A. M., Thursday through Monday, with Tuesday and Wednesday rest days.

Position No. 2550 is a five-day position. Position Nos. 2551 and 2552 are seven-day positions. The rest days of Position Nos. 2551 and 2552 are included within regular Relief Assignment No. 11, which is assigned as follows:

Relieve Chief Yard Clerk Pos. 2560 at Davenport, Ia. Saturday
Yard Clerk Pos. 2551 at Nahant, Ia. Sunday & Monday
Yard Clerk Pos. 2552 at Nahant, Ia. Tues. & Wed.

with Thursday and Friday rest days.

There is attached hereto as Carrier's Exhibit "B" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of June 11, 1964 and as Carrier's Exhibit "C" copy of letter written by Mr. Amour to Mr. Gilligan under date of November 23, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: The following facts are not controverted: Employee R. A. Tubbs is the regular occupant of a Yard Clerk position and was assigned from 7:30 A.M. to 3:30 P.M., Monday through Friday, a five day position. Claimant J. V. Crisci was the regular occupant of a Yard Clerk position and was assigned from 3:30 P.M. to 11:30 P.M., Tuesday through Saturday, a seven day position. In January 1964, there were no available extra or furloughed employees at Nahant, Iowa. Due to the absence of the regular occupant Tubbs from his assignment, his position was temporarily vacant on Tuesday, January 28, 1964, and on Thursday, January 30. As there was no available extra or furloughed employee, Claimant as the senior available Yard Clerk was called for the vacancies and worked for four (4) hours on January 28 and four (4) hours on January 30.

Claimant concedes that Carrier has a right under their agreement to blank a position but contends that such blanking must be for the full eight hours of Tubbs' assignment, under the basic pay rule, and not for a part of the day or four (4) hours of his regular assignment; he asks for four (4) hours additional pay for January 28 and January 30, the days on which he was not permitted to complete the assignment.

Carrier contends that there is no rule which requires the Carrier to fill a position when the regularly assigned occupant thereof absents himself therefrom. Carrier, contrary to Claimant's position, contends that Carrier may blank a temporary vacancy either wholly or partially. Carrier submits that under circumstances such as those present in the instant case, Memorandum of Agreement No. 9 is controlling and provides who shall be called to perform the overtime required. Memorandum of Agreement No. 9 (Revised June 10, 1960) Article 4 is, as follows:

"WHEN AN EMPLOYEE IS CALLED FOR OVERTIME WORK ON OTHER THAN A HOLIDAY AND THE WORK CAN BE IDENTIFIED WITH A SPECIFIC POSITION"—PREPONDERANTLY THE DUTIES OF A SPECIFIC POSITION

When an employee is called for overtime work on other than a holiday and the work is preponderantly the duties of a specific position, the employee regularly assigned to that position will be called. If that employee is unavailable, the senior available employee with sufficient fitness and ability in the 'sub-division' will be called."

Carrier further contends that in pursuance of this provision, the overtime work required of and performed by Claimant was performed during hours that were not continuous with his regular work hours and for the performance of such work Claimant was properly compensated under the provisions of Rule 34 (a) of the Agreement which reads, as follows:

"(a) Employees notified or called to perform work, either before or after, but not continuous with their regular work period shall be allowed a minimum of three hours at pro rata rate for two hours'

work or less and, if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis."

It is a well known rule of construction that where there is a dispute as to the possible application of rules, alleged to be conflicting, that the rule or rules having specific application must be used. See Award 8275--Bakke; Award 12686--West.

Applying this rule of construction to the instant case, Memorandum of Agreement No. 9 provided who should be called to perform the overtime required due to Tubbs absence and Rule 34(a) of the Agreement provided the method of payment for such employees called to perform such overtime work; in view thereof Claimant was not only properly called for the required overtime work but he was, also, properly compensated for it.

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 not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1966.

LABOR MEMBER'S DISSENT TO AWARD NO. 14332, DOCKET CL-15292

The Referee erred in his Opinion when he denied Claimant a full day's pay for Tuesday, January 28, 1964.

Claimant Crisci was called to perform service for four (4) hours on that day (Tuesday, January 28, 1964) on a vacancy that existed between the hours of 7:30 A.M. and 3:30 P.M. The 5-day work week of Claimant Crisci extended from 3:30 P.M., Tuesday to 3:30 P.M., Sunday; and his two rest days extended from 3:30 P.M., Sunday to 3:30 P.M., Tuesday. Therefore, he was called to work on his second rest day, and should have been compensated in accordance with Rule 33--Service on Rest Days, Paragraph (c) reading as follows:

"Service rendered by an employe on his assigned rest day, or days, relieving an employe assigned to such day shall be paid at the rate of the position occupied or his regular rate, whichever is the higher, with a minimum of eight (8) hours at the rate of time and one-half."

It is quite obvious that the claim for January 28, 1964 should have been sustained. Rule 33(c) was called to the Referee's attention, but he refused to recognize its applicability. For this reason, I dissent to the Award.

C. E. Kief, Labor Member
5-19-66