



Award No. 14388
Docket No. CL-14120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5376) that:

(1) The Carrier violated the current agreement between the parties, effective January 15, 1955, and supplements thereto, when on September 17 and 20, 1962, Carrier refused to properly compensate Mr. J. W. Widger, Chief Clerk, Pontiac, Michigan, at rate of time and one-half, the rate of his regular Chief Clerk's position, on which dates he was temporarily assigned to a lower-rated position while working on the 11:00 P. M. Desk Clerk assignment.

(2) Mr. J. W. Widger shall now be compensated the difference at (punitive rate) between his own rate of pay (\$21.5624), and that of the 11:00 P. M. Desk Clerk's position (\$20.1504) for September 17 and 20, 1962.

EMPLOYEES' STATEMENT OF FACTS: Claim was filed by Claimant with the Terminal Trainmaster (Employees' Exhibit No. 1) for the difference between his own rate of pay on the 7:00 A. M. Chief Clerk's position (\$21.5624), and that of the 11:00 P. M. Desk Clerk's position (\$20.1504), for September 17 and 20, 1962; also for the difference between Chief Clerk's rate of pay and that of 3:00 P. M. Crew Dispatcher's position (\$21.1624) for September 22, 1962.

Claim was declined by the Terminal Trainmaster, (Employees' Exhibit No. 2) because Claimant was called out to work in Seniority standing. Claim was appealed to the Superintendent (Employees' Exhibit No. 3) citing a violation of Rules 51(e) and 58(a). Claim was again declined by the Superintendent (Employees' Exhibit No. 4) stating that Short Vacancies cannot be put in the category of overtime.

Claim was appealed to the Vice President and General Manager, Mr. H. A. Sanders, the highest officer of the Carrier designated for such purposes, (Employees' Exhibit No. 5) citing evidence that the Carrier had complied in the past with the requirements of Rule 58(a) by paying at the higher rate whenever an employee works or doubles on a lower-rated position. The highest

"GRAND TRUNK WESTERN RAILROAD COMPANY

January 18, 1963
File: 8325-1(274)
Your File: 160-1430

Mr. James E. Darling, General Chairman
Brotherhood of Railway and Steamship Clerks
1902 South 17th Avenue
Maywood, Illinois

Dear Sir:

This will reply to your letter of January 7, 1963 and confirm conference held in Detroit on January 18, 1963, relative to claim of Chief Clerk J. W. Widger, Pontiac, Michigan, for payment of difference between his own rate of pay (\$21.5624) and that of the 11:00 P. M. Desk Clerk position (\$20.1504) for September 17 and 20, 1962.

At our conference January 18, you reviewed the claim and referred to an allowance made to Pontiac Yard Clerk Frank Arnold for doubling onto another position on February 16, 23, 25, 26 and 28, 1950. You were advised by Carrier representative that the payment to Yard Clerk Arnold did not constitute a precedent for making the allowance in the instant case, such allowance not being justified by the cited Rule (Rule 58) of the Agreement. The Carrier's previous declination contained in my December 28, 1962 letter, was reaffirmed.

Yours very truly,

/s/ H. A. Sanders."

As a matter of information, the September 22, 1962 claim referred to in the foregoing quoted correspondence is not involved in the instant dispute.

OPINION OF BOARD: Claimant Widger was regularly assigned as Chief Clerk in the Yard Office at Pontiac, Michigan, working 7:00 A. M. to 3:00 P. M., Monday through Friday, daily rate \$21.5624. On Monday, September 17 and Thursday, September 20, 1962, short vacancies of one day's duration occurred on the 11:00 P. M. to 7:00 A. M. position of Desk Clerk, daily rate \$20.1504. On each date the employees assigned to the subject yard office were contacted in seniority order and were offered the short vacancy on the 11:00 P. M. Desk Clerk position. On both dates Claimant Widger was the senior employee expressing desire to work the subject vacancies. For his total service on each date, Claimant was paid 8 hours pro rata at the rate of his regular position (7:00 A. M. to 3:00 P. M.) and 8 hours punitive rate based on the lower rate of the Desk Clerk position. The Organization's contention is that Claimant Widger was entitled to be compensated at the punitive rate based on the rate of his regular Chief Clerk position. It is contended that Agreement Rule 58 requires this result.

Rule 58 is quoted in full in the ex parte submissions of the parties. The crucial portion of the rule is the sentence: "Employees temporarily assigned to lower-rated positions or work shall not have their rates reduced."

In a number of previous cases the Board has had occasion to apply this and similar rules to factual circumstances not unlike those here involved.

The issue turns on whether the Claimant employe was temporarily assigned to the lower-rated position or work within the meaning of the rule. We note with regret that the Board's holdings have not been entirely consistent on this question.

We think the correct application of the rule to the subject circumstances calls for the following conclusion. Claimant Widger elected to exercise his seniority rights to the short vacancies on the subject dates and thus was not "assigned" to these vacancies. Claimant held the status of a volunteer, since he could have declined the vacancies without penalty. Awards 2670, 4871, 8898 and 12646. Thus Claimant was properly compensated.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.