



**Award No. 17043**

**Docket No. CL-17231**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Gene T. Ritter, Referee**

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**PARTIES TO DISPUTE:**

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

**SOUTHERN PACIFIC COMPANY  
(Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6297) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when, on February 5, 1964, it called Mr. J. E. Inman to Motive Power Report Clerk Position No. 345, then, after canceling the call, failed and refused to compensate him under applicable rules of the Agreement.

(b) The Southern Pacific Company shall now be required to allow Mr. J. E. Inman eight (8) hours' additional compensation at the time and one-half rate of Position No. 337, Engine Crew Dispatcher, on February 6, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an Agreement bearing effective October 1, 1940, reprinted May 2, 1955, including subsequent revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier), and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees), which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time this dispute arose Mr. J. E. Inman (hereinafter referred to as the Claimant) was the incumbent Engine Crew Dispatcher Position No. 337, Sparks, Nevada, assigned hours 4:00 P. M. to 12:00 M. N., rest days Thursday and Friday.

On Wednesday, February 5, 1964, at 11:50 P. M., Claimant was called and told to report for Position No. 345, assigned hours 12:00 M. N. to 8:00 A. M., February 6, 1964. At 12:01 A. M. he was notified not to report because he was restricted from performing duties required of the position.

telephoned claimant's home and was able to cancel the call before claimant had departed from his home.

3. The restriction on duties which could be performed by claimant had been initially placed into effect in November 1961 by Southern Pacific Hospital Department as a result of a physical examination in which claimant was found to have a Meniere-like syndrome and recurrent dizzy spells. For that reason, claimant was restricted from working around moving equipment or machinery, or off the ground, and was precluded from operating a vehicle transporting other employees. Claimant had acknowledged understanding of the foregoing restrictions in letters dated March 25 and May 21, 1962 (Carrier's Exhibit A), addressed to Carrier's Division Superintendent. Subsequent thereto, claimant had been examined by a Southern Pacific Hospital Department doctor in June 1963 and it was the doctor's opinion at that time the restrictions on claimant's work should continue to remain in effect and no change was made.

Subsequent to the work restriction placed on claimant's duties in November 1961, claimant was assigned to Position No. 337, Engine Crew Dispatcher, the duties of which were not affected by such restriction, and claimant continued to hold that position up to the date this claim arose.

5. By supplemental semi-monthly time card, claimant filed a claim for 8 hours at the applicable overtime rate of pay of Position No. 337, Engine Crew Dispatcher, for February 6, 1964, indicating thereon the following:

"Claim one day account called for work 2/5/64 at 11:50 P. M.  
and Released at 12:05 A. M. 2/6/64 Called for Job No. 345 MP Report  
Clerk Released order R. S. Cullen."

By letter dated February 12, 1964 (Carrier's Exhibit B), Carrier's Division Superintendent denied the claim.

By letter dated March 7, 1964 (Carrier's Exhibit C), Petitioner's Division Chairman submitted claim in behalf of claimant for "8 hours compensation at his assigned rate of pay . . ." for February 6, 1964, account called to perform service on his assigned rest day. By letter dated March 11, 1964 (Carrier's Exhibit D), Carrier's Division Superintendent denied the claim and by letter dated April 19, 1964 (Carrier's Exhibit E), Petitioner's Division Chairman advised that the claim would be appealed.

By letter dated May 4, 1964 (Carrier's Exhibit F), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated November 3, 1965 (Carrier's Exhibit G), the latter denied the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In November of 1961 this Claimant was found to have a Meniere-like syndrome and recurrent dizzy spells by his physical examiners of the Southern Pacific Hospital Department. As a result of these findings, Claimant was restricted from working around moving equipment or machinery, or off the ground, and was precluded from operating a vehicle transporting other employees. Claimant was notified of these restrictions and his acknowledgment of this notice is contained in the record. In June of 1963,

Claimant was again examined by a Southern Pacific Hospital Department doctor and as a result thereof, these restrictions remained in full force and effect.

Carrier had assigned certain Clerical personnel to transport train and engine crews in Carrier's carryall bus during their regular working hours. At approximately 11:45 P. M., Wednesday, February 5, 1964 the regularly assigned employe having the duty of transporting train and engine crews during his working hours reported that he was unable to work his position commencing at 12:00 midnight — 15 minutes from the time of the call. Claimant was contacted by telephone at 11:50 P. M. and was told to report to fill the absent employe's position. It was then discovered by the dispatcher that Claimant was on a restricted duty schedule and at approximately 12:00 midnight, the dispatcher phoned Claimant's home and was able to cancel the call. Claimant had not departed from his home.

The Organization contends that Carrier violated Rules 20, 21 and 25 when it refused to compensate Claimant for eight (8) hours at the time and one-half rate for this abortive call to fill a position falling on Claimant's rest day.

The involved rules are as follows:

**"RULE 20.**

(b) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from a Guaranteed Extra Board or where days off are being accumulated under paragraph captioned 'Nonconsecutive Rest Days.'

(c) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from a Guaranteed Extra Board, or where days off are being accumulated under paragraph (g) (3) of Rule 9.

**RULE 21.**

(d) Except as otherwise provided in Rule 25, employes notified or called to perform work on Sundays, weekday off days, or holidays, shall be paid a minimum of eight (8) hours at time and one-half.

**RULE 25.**

(b) Service rendered by an employe on his assigned rest day, or days, shall be paid for under the provisions of Rule 21 (d)."

It goes undisputed in the record that Claimant had knowledge of the fact that the position he was called to relieve involved the duty of driving a vehicle. It is also crystal clear that this Claimant was well aware of the

restrictions of his employment, as shown in his letters of March 25, 1962 and May 21, 1962, as follows:

"Sparks, Nevada  
March 25, 1962

Mr. D. W. Tanner - Ogden

My physical condition whereby I may have occasional dizzy spells has been discussed with me by Mr. H. H. Hughes, Road Foreman of Engines, and this is to give you my assurance that I understand I am not to drive company vehicle or any vehicle containing company employees at any time, unless perhaps in the future this condition will clear up. I would like to say for the record, that I have not had any serious difficulty since December 1961.

My present assignment of Position No. 337, Engine Crew Dspr., assigned hours 4 P. M.-12 M. N., does not require me to get off the ground or transport company employees in a company vehicle.

/s/ James E. Inman  
SL PR  
Ogden, May 21, 1962

Mr. D. W. Tanner: (2)

I understand that my services are restricted by the Southern Pacific Hospital Department account physical condition to assignments where I will not work around moving equipment or machinery, work off the ground, or drive a vehicle while transporting other Company employees.

/s/ James E. Inman

Date: 5-23-62

Witness: /s/ H. H. Hughes"

Therefore, this Board finds that Claimant had the duty to notify the dispatcher of his inability to handle the duties he was called for when he was first contacted. It is the opinion of this Board that the above cited rules contemplate the calling of a qualified and able employee and that the call for a physically restricted employee, who had knowledge of his restrictions, is a nullity. To hold otherwise would be placing a premium on Claimant's implied duty to disclose a known restriction.

As far as the above recited provisions of the Agreement are concerned, it is axiomatic that one provision cannot be construed to the exclusion of all other provisions; the Agreement must be considered in its entirety. Therefore Rule 25 (b) must be considered in the interpretation of Rule 21(d). Rule 25(b) makes it unequivocal that service must be rendered by an employee on his rest day in order that he be compensated as outlined in Rule 21(d).

For the foregoing reasons, this claim will be denied.

**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 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 26th day of March 1969.