Award No. 17218

Docket No. CL-17622

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6409) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it failed to call Mrs. Rebecca K. LaCoste and Mrs. V. D. Stevens, Clerks in the Office of Mr. H. T. Amy, Manager, Payroll Accounting, to perform overtime on their positions on Tuesday, April 13, 1965, calling instead Mrs. R. N. Hornsby, a junior clerk, and Mr. J. N. Kaufman, Supervisor.

(b) Mrs. LaCoste and Mrs. Stevens shall be compensated at the rate of time and one-half their regular rates for four hours' pay for April 13, 1965.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the Class or Craft of employes in which the claimants in this case hold positions and the Southern Railway Company.

The schedule employes involved in this claim are carried on the Southern Railway System—Office of Manager, Payroll Accounting, Atlanta, Georgia, Seniority Roster—Group 1 Clerks, with seniority dates as follows: Mrs. R. K. La Coste, November 5, 1941; Mrs. V. D. Stevens, May 16, 1947; Mrs. R. H. Hornsby, June 16, 1947. They all had more than eighteen years service with the Carrier at the time of the claim.

On Tuesday, April 13, 1965, it was necessary to work overtime in the Office of Manager, Payroll Accounting, in connection with payroll distribution. Mrs. LaCoste and Mrs. Stevens, senior employes to Mrs. Hornsby, although they had performed the same work during the day, were not permitted to work, while Mrs. Hornsby, a junior employe under the supervision of Mr. J. N. Kaufman, was retained on duty to perform the work in question. The preponderating duties as shown in the bulletins will bear out

relief assignment and occupant of such regular relief assignment is absent on such day and it is necessary to use a regularly assigned employee on such assignment at rate of time and one-half, preference to such work will be given the occupant of such position who is observing that day as his assigned rest day."

(Exhibits not Reproduced)

OPINION OF BOARD: The issue herein is whether or not Carrier violated the Agreement when it failed to permit Claimants to perform overtime work on April 13, 1965.

The Organization's position is that Rule 28(a) of the Agreement was violated; that two improper employes, a supervisor and a junior clerk, performed four hours distributors work that belonged to and therefore should have been performed by Claimants on the date in question; that where there are several positions with similar duties and overtime work is required, the senior employe should be given preference.

Carrier contends that Rule 28(a) was complied with in that the overtime work here in question belonged to the person who occupied the position, namely Mrs. R. R. Hornsby; that Supervisor Kaufman did not perform any clerical work on the date in question; that Mrs. Hornsby, by affidavit, stated she did not perform any of the duties of Claimants' positions on said date; that due to a computer breakdown, no work was performed after 5:00 P.M. on April 13, 1965.

Rule 28(a), Assignment of Overtime, provides as follows:

"When necessary to work overtime before or after assigned hours, the employee occupying the position on which overtime work is necessary will be given preference."

The burden is upon the petitioners herein to prove that their positions were worked overtime on said date in question. The record is void of evidence that Mr. Kaufman, the Supervisor, performed any of the work of Claimant's positions. Claimant, R. K. LaCosta, attempts to establish this fact in her statement in the record, in which she states: "If it was necessary for me to work with Mr. Kaufman until 5:00 P.M., then I feel it was necessary to stay the other four hours." It cannot be inferred from this conclusion on Mrs. LaCosta's part that then Mr. Kaufman evidently did her work in view of Carrier's denial and Carrier's reason for Mr. Kaufman staying due to Carrier's practice of not leaving female employes by themselves in the building in the evening on an overtime basis. Further, the junior employe, Mrs. Hornsby, by affidavit stated she did not perform any of the duties of Claimants' positions on said date. Thus, Petitioners failed to prove by competent evidence that their positions were worked overtime on said date.

In its rebuttal brief, the Organization attempts to support its position by alleging that since all the clerks in the office of Manager, Payroll Accounting, Atlanta, Georgia, have similar duties, overtime should be given to the senior employe available and desiring the work. However, examination of the bulletins covering the positions of Mrs. Steven, Mrs. LaCosta and Mrs. Hornsby show that their duties are not identical; and therefore this contention is without merit.

For the aforesaid reasons, this claim must be denied.

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 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 18th day of June 1969.

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