



Award Number 17572

Docket Number CL-17701

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood (GL-6427) that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to work the senior employe on a holiday to perform janitor work in Seniority District No. 30.
2. Carrier shall now be required to compensate employe L. O. McKenzie, for eight (8) hours at the overtime rate of Janitor Position No. 00110 for February 22, 1967.

EMPLOYES' STATEMENT OF FACTS: Carrier maintains three janitor positions in Seniority District No. 30 at Bensenville, Illinois, each of which works at a different location within the yard, as follows:

Pos. No.	Hours & Days of Assignment	Rest Days
00120	3 P.M.-11:30 P.M. Sunday-Thursday	Friday & Saturday
00140	7 A.M.- 3:30 P.M. Tuesday-Saturday	Sunday & Monday
00110	6 A.M.- 2:30 P.M. Wednesday-Sunday	Monday & Tuesday

Employe L. O. McKenzie, who has a seniority date of June 10, 1963 is the occupant of Position 00120 and his work is confined to cleaning of the superintendent's office and building.

Employe W. H. Barton, who has a seniority date of February 7, 1967, is the regular occupant of Position 00140, and his work is confined to cleaning the hump switch building, hump office and switchmen's shanty.

Employe W. D. Daggett, who is the senior janitor with a seniority date of December 18, 1961, is the regular occupant of Position 00110, and his work is primarily confined to cleaning up buildings at the east end of the yard.

On February 22, 1967, Washington's Birthday holiday, the urgent duties of all three janitor positions were combined and performed. When the over-

Only Janitor Position 00140 was required on the holiday here involved and the occupant thereof, i.e., W. H. Barton, was, therefore, called and utilized to perform service during the regularly assigned hours (7:00 A.M. to 3:30 P.M.) of his regularly assigned Position (Janitor Position No. 00140) on that day in accordance with the provisions of Rule 32(f) which reads as follows:

"In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35 (b), (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work." (Emphasis ours)

For the service performed by employee Barton on the holiday here involved, i.e., February 22, 1967, he was allowed 8 hours at the time and one-half rate of his regularly assigned Janitor Position No. 00140 in accordance with the provisions of aforementioned Rule 35(b) and Rule 34(d) which reads in pertinent part as follows:

"Employees notified or called to perform work on Sunday or on one of the seven (7) holidays specified in Rule 35 (b) will be allowed five hours and twenty minutes (5'20") at the rate of time and one-half for four (4) hours' work or less. Employees worked in excess of four (4) hours will be allowed a minimum of eight (8) hours at the rate of time and one-half." (Emphasis ours)

There is attached hereto as Carrier's Exhibit "D" copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of May 24, 1967.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant contends Carrier violated Rules 28, 32 (f) and 32 (g) of the Agreement. These Rules follow:

"RULE 28—WORK ON UNASSIGNED DAYS

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"RULE 32—OVERTIME

(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35 (b), (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32 (f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work.

(g) When additional help is required for overtime work, or when duties to be performed on overtime cannot be identified with a specific position, employees will be assigned to such overtime in accordance with seniority, fitness and ability, first from the subdivision of the department wherein the work occurs and, secondly, from the entire department."

The question in this case seems to revolve mostly around Rule 32 (g) which requires that overtime assignments shall be made in accordance with seniority, fitness and ability when the duties to be performed on overtime cannot be identified with a specific position.

The record indicates that the janitor work performed by the junior employe on February 22, 1967, cannot be specifically identified with anyone of the three janitor positions located at Bensenville.

We believe that Claimant, on the basis of seniority, fitness and ability, should have been called to work on February 22, 1967.

Claimant was entitled to overtime work on February 22, 1967, on the basis of seniority and he should be paid the difference between the pro rata rate which he apparently has already received and the overtime rate to which he is entitled.

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 violated.

A W A R D

Claim sustained. Claimant shall receive the difference between the pro rata rate for eight hours work which he has received and the overtime rate to which he is entitled.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.