



Award No. 17618

Docket No. CL-17949

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6485) that:

1. Carrier violated the rules of the Clerks' Agreement at Bensenville, Illinois on July 25 and 26, 1967, when in lieu of calling and using employe E. Valerugo, it called and used junior employe N. T. Guthrie to perform overtime work occurring on Position 8004 on those dates.

2. Carrier shall now be required to compensate employe E. Valerugo for eight (8) hours at the time and one-half rate of his regularly assigned Perishable Freight Inspector Position No. 8000 for each day, July 25 and 26, 1967.

EMPLOYEES' STATEMENT OF FACTS: Claimant E. A. Valerugo, with a seniority date of May 16, 1948 in Seniority District No. 48, is the regularly assigned occupant of Perishable Freight Inspector Position 8000 at Bensenville, Illinois from 7 A.M. to 3 P.M. Monday through Friday, with Saturday and Sunday rest days; rate of pay is \$24.6288 per day.

Employe N. T. Guthrie, with seniority date of May 25, 1967 in Seniority District 48, is regularly assigned to Perishable Freight Inspector Position 8003 at Bensenville, Illinois from 3 P.M. to 11 P.M., Tuesday through Saturday, with Sunday and Monday rest days; rate of pay \$23.3755 per day.

Employe P. Mareno is the regularly assigned occupant of Perishable Freight Inspector Position 8004 at Bensenville, Illinois from 11 PM to 7 AM, Thursday through Monday, with Tuesday and Wednesday rest days. Assignment 8004 was temporarily vacant on Tuesday, July 25th and Wednesday, July 26, 1967, and it was necessary to fill the assignment on an overtime basis.

In lieu of calling claimant Valerugo, who was the senior available employe, Carrier called and used junior employe Guthrie to fill Position 8004 on July 25th and 26th, 1967.

Claimant Valerugo filed claim for each date with Assistant to Vice President, Mr. R. J. Kemp who declined payment in his letter dated September 12, 1967. See Employes' Exhibit "A".

Claim was appealed to Mr. S. W. Amour, Vice President-Labor Relations on November 1, 1967 and was declined by him in letter dated December 21, 1967. See Employees' Exhibit "B".

Submitted as Employees' Exhibit "C" is copy of General Chairman Hopper's letter to Mr. Amour dated January 4, 1968.

Claim was discussed during conference with management on May 31, 1968 with no settlement reached.

(Exhibits not Reproduced)

CARRIER'S STATEMENT OF FACTS: As of the claim dates, i.e., July 25 and 26, 1967, claimant Valerugo, who had (he resigned from Carrier's service on February 9, 1968) a seniority date of May 16, 1948 in Seniority District No. 48, was the regularly assigned occupant of Perishable Freight Inspector Position No. 80000 at Bensenville, Illinois which is assigned from 7:00 AM to 3:00 PM Monday through Friday with Saturday and Sunday rest days. Rate of pay \$24.6286 perday.

Employee N. T. Guthrie, who has a May 25, 1967 seniority date in Seniority District No. 48, was the regularly assigned occupant of Perishable Freight Inspector Position No. 80030 at Bensenville which is assigned from 3:00 PM to 11:00 PM Tuesday through Saturday with Sunday and Monday rest days. Rate of pay \$23.3755 per day.

On Tuesday, July 25 and Wednesday, July 26, 1967, which were assigned work days for both employee Guthrie and claimant Valerugo, the regularly assigned occupant of Perishable Freight Inspector Position No. 80040, rate of pay \$23.3755, was absent account illness thereby creating a temporary vacancy on Position No. 80040 on those two dates.

It became necessary to fill the temporary vacancies on Position No. 80040 on July 25 and 26, 1967 on an overtime basis for which service employee Guthrie was called and utilized.

Although the Carrier does not necessarily agree, yet even if it could perhaps be said that claimant Valerugo should have been called for the overtime work on Position No. 80040 prior to calling and using employee Guthrie, the claim as presented in behalf of claimant Valerugo, for reasons that will be fully explained in "Carrier's Position", is not supported by schedule rules or agreements.

Attached hereto as Carrier's Exhibit "A" is a copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of December 21, 1967 and as Carrier's Exhibit "B" copy of letter written by Mr. Amour to Mr. Hopper under date of February 8, 1968.

(Exhibits not Reproduced)

OPINION OF BOARD: The issue herein is whether or not Carrier violated Rules 17 and 32 of the Agreement when it failed to call Claimant for overtime work on July 25 and 26, 1967.

The Organization's position is that when the Perishable Freight Inspection Position 8004 at Bensenville, Illinois, 11:00 P.M. to 7 A.M., Thursday through Monday, with Tuesday and Wednesday rest days, became temporarily vacant on the rest days, Tuesday and Wednesday, July 25

and 26, and it was necessary to fill said assignment on an overtime basis Carrier was required to call the senior available employee, in this instance Claimant, instead of calling and using a junior employee to fill said Position 8004 on the days in question.

Carrier's defenses to this claim are: (1) that Item 2 of the Statement of claim is not properly before this Board for determination on account of Claimant's alleging a violation because not called to perform the overtime work on Position 8004 and then filing a claim for payment at the rate of another position, in this instance Position 8000; that the instant claim is not supported in any way by past practice, schedule rules or agreement; that Rule 17 is not applicable in overtime situations as herein inasmuch as Rule 17 applies to employees during the guaranteed portion of their regular assignment; that if Rule 17 is applicable in overtime situations, then it would not have been necessary to write Rule 33 (c) of the Agreement which said Rule 33 (c) clearly establishes that Rule 17 is not applicable in overtime situations.

The applicable provisions of Rule 17 are:

"(a) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

Rule 32, "Overtime", the pertinent parts thereof provide:

* * * * *

"(c) Work in excess of forty (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 employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27.

* * * * *

"(g) When additional help is required for overtime work or when the 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."

It is undisputed that Claimant was senior to the employee called to perform the overtime work in question on said dates involved herein. We find that Rule 32 (g) is clear and unambiguous and it required Carrier, in this instance, to call Claimant because of his priority due to seniority. No contentions or allegations were made that Claimant was not fit or lacked ability to perform the overtime work in question. Therefore we find that Carrier violated the Agreement herein.

Carrier would have us interpolate as a part of said Rule 17 that "overtime" is excepted from the provisions of said Rule. With this contention of Carrier, we cannot concur. To the contrary, we agree with the Organization that Rule 17 provides that employees will not have their pay rates reduced when assigned to lower rated positions but shall receive the higher rates of pay while occupying such position; and that Claimant properly

claimed the higher rate of his regular assigned position when Carrier failed to call him for the lower-rated temporary vacancy. We will therefore sustain the claim.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.

CARRIER MEMBERS' DISSENT TO AWARD 17618

DOCKET CL-17949 (REFEREE DUGAN)

We respectfully submit that the better reasoned awards of this Division indicate the Preservation of Rates Rule is not applicable to overtime work involved in the instant case — see Awards 2670, 2671, 2672, 2680, 8898, 12646 and 14388. Furthermore, the fact that the Preservation of Rates Rule on this property (Rule 17) was not intended by the parties to cover overtime situations is established by a clear implication in Rule 32 (c) and a controlling past practice.

/s/ **G. L. NAYLOR**
G. L. Naylor

/s/ **R. E. BLACK**
R. E. Black

/s/ **P. C. CARTER**
P. C. Carter

/s/ **W. B. JONES**
W. B. Jones

/s/ **G. C. WHITE**
G. C. White