



Award Number 17913

Docket Number CL-18334

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Systems Committee of the Brotherhood (GL-6610) that:

- (a) Carrier violated the rules of the Agreement extant between the parties when it failed and refused to properly compensate Mr. W. L. LeBeouf, Jr. for work performed from 8:00 A.M. to 12:00 Midnight April 9, 1968.
- (b) Mr. W. L. LeBeouf, Jr. shall now be compensated at the rate of time and one-half less what he has already received for service performed from 4:00 P.M. to 12:00 Midnight April 9, 1968.

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, April 9, 1968 Mr. W. L. LeBeouf, Jr. filled a temporary vacancy on the position of Rate and Diversion Clerk having a starting time of 8:00 A.M. and continuous therewith he worked his regular assignment from 4:00 P.M. to 12:00 Midnight as Assistant Chief Clerk. For this service he filed a time slip claiming eight hours at the straight time rate and eight hours at the rate of time and one-half for the 16 hours of service performed between 8:00 A.M. and 12:00 Midnight.

Claim for 8 hours at the rate of time and one-half for the first shift worked on April 9, 1968 was declined by Agent H. K. Reese through his letter dated April 15, 1968, Employees' Exhibit "A" wherein he only allowed Mr. LeBeouf eight hours at the straight time rate for this service.

Claim was appealed to Superintendent J. C. Lusar through Local Chairman E. P. Miller's letter of May 11, 1968, Employees' Exhibit "B".

Superintendent J. C. Lusar declined this claim through his letter dated June 11, 1968, Employees' Exhibit "C".

Claim was thereafter appealed to Mr. W. A. Tussey, Manager of Personnel, the highest office of the Carrier authorized to handle disputes on the property through the General Chairman's letter dated July 18, 1968, Employees' Exhibit "D".

Claim was discussed in conference on August 13, 1968 and declined through Mr. W. A. Tussey's letter dated September 6, 1968, Employees' Exhibit "E".

shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. When an employe junior to other applicants is assigned to a bulletined position, the senior employes making application will be advised the reason for their non-assignment if they request such information in writing and file it within 15 days from date of assignment.

NOTE: The work 'sufficient' is intended more clearly to establish the right of the senior employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability."

"NOTICE OF NEW POSITION OR VACANCY

Rule 31. (As Revised 9/16/65).

- (f) Employes will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 40(d) or Rule 29."

(Exhibits Not Reproduced)

OPINION OF BOARD: At the threshold we are met with Carrier's contention that claim for payment during the period 4 P.M. to 12 Midnight was not discussed on the property. The record indicates the Employes vacillated from time to time between claiming for the first period worked and claiming for the last period worked. We find in the letter of Carrier's highest officer to the General Chairman denying the claim the following statement:

"In conference it was your opinion Claimant was entitled to payment at the overtime rate for either the 8:00 A.M. to 4:00 P.M. shift, or for his regular assigned hours 4:00 P.M. to 12:00 Midnight on April 9, 1968."

Furthermore, in the letters of the Local Chairman and General Chairman on the property claim was for 8 of the 16 hours worked without specifying which 8 hours. From this we conclude that the matter was handled on the property.

Claimant was regularly assigned to a position with hours 4 P.M. to 12 Midnight. On April 8 he did not work his regular assignment but was required to fill the position of an employe on vacation during the hours 8 A.M. to 12 Noon and 1 P.M. to 4 P.M., April 9. Thereafter he worked his regular assignment 4 P.M. to 12 Midnight.

The time and one-half rate is claimed for the service during the second 8 hours worked under Rule 20 (a) which provides in material part that:

"... time in excess of 8 hours exclusive of meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half." (Emphasis added.)

Carrier's defense on the merits is that the term "any 24-hour period" in Rule 20 refers only to 24 hour periods that commence with Claimant's assigned starting time. The same contention under a rule containing the same language was made by another carrier in our Award 14529 and was rejected by the Board. We will follow Award 14529 on the point and sustain the claim.