

Award No. 18499
Docket No. CL-18793

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that (GL-6830)

1. Carrier violated the Clerks' Agreement when it failed to call Clerk J. V. Hellane for duty on August 25, 1969 and that

2. Clerk Hellane shall now be allowed eight hours of pay at the time and one-half rate for the date of August 25, 1969.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. V. Hellane, Claimant, is a regularly assigned relief clerk in the office of the Superintendent of Transportation at Hagerstown, Maryland. His work week is as follows:

Monday - rest day

Tuesday - rest day

Wednesday - 4 P. M.-12 Midnight Asst. Trace Clerk

Thursday - 4 P. M.-12 Midnight Asst. Trace Clerk

Friday - 8 A. M.-5 P. M. utilized on any position

Saturday - 6 A. M.-2 P. M. Per Diem and Statistical Clerk

Sunday - 6 A. M.-2 P. M. Per Diem and Statistical Clerk

The work week of J. D. Bowman, involved in this situation, is Monday through Friday, and he occupies the position of Statistical and Per Diem Clerk. The Claimant vices this position, regularly assigned, on Saturday and Sunday.

Also, L. C. Eyler, similarly involved in this matter, occupies the position of Per Diem and Vacation Relief Clerk, work week of Monday through Friday.

On Monday, August 25, 1969, Clerk Bowman was off for one day on vacation. This same date, Clerk Eyler was also off—it was his birthday-holiday. Carrier called Clerk Eyler to work on his birthday-holiday to fill the vacancy created by Clerk Bowman's vacation absence.

ing, checking and compiling per diem reports, originating and checking per diem claims against foreign lines, preparing per diem and mileage reports, assisting in other Car Record and Transportation work and be capable of efficiently operating calculating machine, adding machine and comptometer.

3. Incumbent: J. V. Hellane (Claimant)

Title: Relief Clerk

Hours: Wednesday and Thursday, 4:00 P. M.-12 Midnight

Friday—8:00 A. M.-12 Noon: 1:00 P. M.-5:00 P. M.

Sat. & Sun., 6:00 A. M.-11:00 A. M.; 12 Noon-3 P. M.

Duties: Handling home routes, compiling and checking operating reports, protecting office at night, extending, checking and compiling per diem reports, originating and checking per diem claims against foreign lines, preparing per diem and mileage reports, assisting in other Car Record and Transportation work and be capable of efficiently operating calculating machine, adding machine and comptometer.

On Monday, August 25, 1969, Clerk Bowman was off for one day on vacation. L. C. Eyler, the No. 2 Vacation Relief Clerk, filled the position on that day. The claimant was a relief clerk who was on his rest day and contends that since August 25th was Mr. Eyler's birthday, he should have observed his birthday by taking the day off and the claimant called to fill the position on his rest day.

OPINION OF BOARD: On Monday, August 25, 1969, Clerk Bowman was off for one day on vacation. It is agreed that under normal circumstances there would have been no dispute when the Carrier called the Per Diem and No. 2 Vacation Relief Clerk Eyler to work the position. The Organization states in its submission that Eyler would normally have filled the vacancy, but for certain extenuating circumstances which required that Rule 39 be followed in the filling of the vacancy. Rule 39 reads as follows:

"FILLING OVERTIME VACANCIES

When extra employes are unavailable at the pro rata rate and it is necessary to fill a vacancy on overtime basis, employes will be called for the overtime work in the following order:

1. The regular incumbent of the position requiring overtime.
2. The regular relief employe assigned to the position requiring overtime. Relief employes are available on their rest days only and have rights for call on any position which they cover during their five-day work-week assignment. When more than one relief employe is available on the same day, seniority will govern.
3. The first-out qualified extra board employe.
4. If the position cannot be filled by the foregoing, available qualified employes in the office where the vacancy occurs will be offered the position in seniority order, if

not working their own position during the same hours as the position requiring overtime.

5. When a qualified employe cannot be secured to fill the vacancy as outlined above, the office force may be rearranged to the extent necessary to secure a qualified employe.

The foregoing is not applicable to daily overtime which is continuous with a tour of duty, nor does it prevent the use of furloughed employes to perform extra and relief work as provided in Rule 20."

The extenuating circumstances referred to by the Organization is the fact that the day in question was the birthday-holiday of Clerk Eyler. This meant that the Carrier would be required to compensate Eyler at a time and one-half rate if it used him on his birthday.

The Organization contends that at this point the Carrier was faced with a Rule 39 situation in that in filling the vacancy the Carrier had no alternative but to pay the punitive rate.

The case turns on the question of whether the necessity of having to compensate Eyler at the time and one-half rate requires the Carrier to look to Rule 39 in filling the vacancy. Rule 39 is applied when (a) Extra employes are unavailable at the pro rata rate and (b) it becomes necessary to fill a vacancy on an overtime basis. In the instant case it was not necessary to fill a vacancy on an overtime basis. The Carrier properly called the employe who filled the vacancy as part of his regular assignment. The fact that he must be compensated at time and one-half because it was his birthday-holiday has nothing to do with filling a vacancy on an overtime basis. Filling a vacancy on an overtime basis relates to those circumstances set out in Rule 38. The fact that the rate of pay for working a holiday is the same as the overtime rate does not cause them to be one and the same.

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 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1971.

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