

Award No. 18552
Docket No. CL-18789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6771) that:

1) Carrier failed to properly compensate employe D. LaRue for service rendered on his assigned rest day December 28, 1968 relieving an employe assigned to such day.

2) Carrier shall be required to compensate employe D. LaRue for the difference between the amount paid him, i.e., 3½ hours at the rate of time and one-half, and eight (8) hours at the time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Employe D. LaRue is the regularly assigned occupant of Relief Road Caller Position at Muskego Yard, Milwaukee, Wis. and relieves Road Caller Position 0959 from 7 A. M. to 3 P. M., Sunday and Monday; Road Caller Position 0960 from 3 P. M. to 11 P. M., Tuesday and Wednesday; and Road Caller Position 0961 on Thursday. and has rest days of Friday and Saturday.

On his Saturday, December 28, 1968 rest day, employe LaRue was called to fill Yard Caller Position 09560 from 7 A. M. to 3 P. M., which was temporarily vacant account absence of regular occupant Miles Cronic, and filled that position from 7 A. M. to 3 P. M. For such service he was paid 8 hours at the time and one-half rate of Position 09560.

Due to the regular occupant of Yard Caller Position 09570 leaving his assignment account illness, employe LaRue was again called on December 28th and filled that position from 7:30 P. M. to 11 P. M.

Timeslip claiming 8 hours payment at the time and one-half rate of Position 09570 presented by claimant for service rendered on his assigned rest day relieving the employe assigned to Position 09570 on that day was declined in turn by Assistant Superintendent F. A. Deutsch and Superintendent N. H. McKegney, and in lieu thereof he was allowed payment for 3½ hours at the time and one-half rate.

The claim was appealed to Mr. L. W. Harrington on June 5, 1969 and was declined by him in his letter of July 9, 1969.

Submitted as Employes' Exhibits are the following:

"A" — copy of Assistant Superintendent Deutsch's letter to claimant LaRue dated January 6, 1969,

"B" — copy of Superintendent McKegney's letter to Local Chairman dated April 22, 1969,

"C" — copy of General Chairman's letter to Mr. Harrington dated July 10, 1969.

Conference was held for purpose of disposition of this case on December 5, 1969 with no settlement reached.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: As of the date of the instant claim, i.e., December 28, 1968, Claimant D. LaRue held a regular relief road caller assignment at Muskego Yard, Milwaukee, Wisconsin, whose work week was Sunday through Thursday, with rest days Friday and Saturday.

On Saturday, December 28, 1968, which was claimant's rest day, the Carrier had a temporary vacancy occurring on yard caller Position 09560, assigned hours 7:00 A.M. to 3:00 P.M., due to the absence of the regular assigned occupant thereof who laid off account illness. Claimant LaRue was called to fill this vacancy for which he was compensated eight hours pay at the time and one-half rate applicable to said position.

On this same date (December 28, 1968), the regular occupant of yard caller Position 09570 became ill after reporting for work at 3:00 P.M. and left his assignment at 7:30 P.M. Claimant LaRue called to complete this assignment and worked the remainder of the eight-hour day, a period of three hours and 30 minutes, for which he received compensation at the time and one-half rate for three hours and 30 minutes work performed.

Attached hereto as Carrier's exhibits are copies of the following letters:

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of July 9, 1969 — Carrier's Exhibit "A."

Letter written by Mr. Harrington to Mr. Hopper under date of July 16, 1969 — Carrier's Exhibit "B."

(Exhibits not reproduced.)

OPINION OF BOARD: On the Claimant's rest day he was called to fill Yard Caller 09560 position from 7 A.M. to 3 P.M., because of the absence of the incumbent for which he was paid 8 hours at time and one-half. On the same day he was again called to fill the position Yard Caller 09570 as a substitute for the regularly assigned employe who left the job due to illness. This second call-out extended from 7:30 A.M. to 11 P.M. for which he was paid 3½ hours at time and one-half.

The Organization alleges a violation of Rule 33(c) of the Agreement:

"(c) Service rendered by an employe on his assigned rest day or days, relieving an employe assigned to such day shall be paid at the rate of the position occupied or his regular rate, whichever is the higher, with a minimum of eight (8) hours at the rate of time and one-half."

It is argued that an employe who relieves other employes on more than one assignment on his day of rest is entitled to the minimum stipulated in Rule 33(c) on each such assignment. In this case, the Claimant should receive payment of 8 hours at time and one-half at the rate of his regular position or the position occupied, whichever is higher for each call-out.

The Carrier submits that Rule 33(c) provides a minimum which shall be paid an employe for all work performed on his day of rest. Since he was paid 11½ hours at time and one-half for the day in question, the minimum requirement of 8 hours was met and thus, the Agreement was not violated.

The issue is clear. Does Rule 33(c) provide for a minimum of eight hours for each call-out on the employe's day of rest or does the minimum apply to all hours worked on his day of rest?

If one employe had been assigned on his day of rest to relieve an employe on position 09560 and another employe assigned on his day of rest to relieve the employe assigned to position 09570 each would have been entitled to the minimum of 8 hours under the rule. The fact that both assignments were performed by the Claimant does not alter the requirements of the Rule which must be construed to entitle the Claimant to the minimum of 8 hours at the appropriate rate as therein defined for each relief assignment on December 28, 1968.

A similar Rule applied under similar circumstances brought the Board to this same conclusion in Award No. 18502 (Referee Ritter). This Board concurs with the findings in that case and will sustain the claim here before us.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.

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