



Award No. 18652

Docket No. CL-18973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6866) that:

1. Carrier violated the rules of the Clerks Agreement, effective September 1, 1952, as amended, particularly Rules 3(b), 16 and 17(a) when on Friday, November 21, 1969, Tuesday, December 2, 1969 and on Thursday, December 4, 1969 it refused to properly compensate Chief Engine Crew Dispatcher L. A. Henderson for overtime performed on above dates.

2. Carrier shall now be required to pay L. A. Henderson the difference between the overtime rate of Chief Engine Crew Dispatcher, \$6.00 per hour and the amounts already paid by Carrier on above dates.

EMPLOYEES' STATEMENT OF FACTS: Claimant, L. A. Henderson, is the senior employe on the Boston Engine Terminal roster with a service date of 10-18-40 and seniority date of 3-24-41, rate of pay \$32.00 daily. He owns the first trick assignment 7:30 A. M. to 3:30 P. M., Monday thru Friday with Saturday and Sunday rest days. On Friday, November 21, 1969 and on Thursday, December 4, 1969, due to absence of the incumbent it was necessary to fill the 3:30 P. M.-11:30 P. M. Engine Crew dispatcher assignment rated at \$28.64 daily, pro-rata (on an overtime basis), also on Thursday, December 4, 1969 it was necessary to work at overtime rates an employe on the unassigned rest day of the engine dispatchers 11:30 P. M. to 7:30 A. M. assignment rated at \$30.88 daily, pro-rata.

Carriers, General Foreman asked Claimant if he wanted the punitive work and was assigned thereto.

Until this happened an employe working overtime was always paid the higher rate, either the rate of the job covered if higher, or his own rate if lower.

Claimant submitted claim to his General Foreman and was denied the difference in pay in a letter to him December 23, 1969 stating "A man work-

Engine Crew Dispatchers are paid \$3.58 hourly. In addition, there is the same coverage by Engine Dispatchers who are paid \$3.86 hourly. On the first shift, with Saturdays and Sundays as days of rest, there is a Chief Engine Crew Dispatcher who is paid \$4.00 hourly, due to additional duties required. See Carrier's Exhibit "B." The claimant is the incumbent of the Chief Engine Crew Dispatcher's position, covered by all rules of the agreement.

On dates of claim, Friday, November 21, 1969, Tuesday, December 2, 1969 and Thursday, December 4, 1969, the claimant, Chief Engine Crew Dispatchers L. A. Henderson, exercised his seniority to cover temporary second or third trick temporary vacancies as Engine Dispatcher or Engine Crew Dispatcher. Of course, on such assignments he did not perform the additional duties for which he is paid the higher hourly rate during his regular day shift. Claimant was paid the time and one-half rate of the position covered.

Claim was made that the claimant should have been allowed the rate of his regular position. Claim was declined on the basis that, except when an employe works his rest day, he takes the rate of the position worked.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant filled a vacancy as 3:30-11:30 P. M. Engine Crew Dispatcher on Friday, November 21, 1969 and on Thursday, December 4, 1969 due to the absence of another employe.

The position that he filled pays a lower rate than his regular assignment. Carrier paid Claimant at the lower rate. The case calls into effect Rule 16, Preservation of Rates:

"Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates for the full day while occupying such positions or performing such work except when employes are filling in for other employes who are continuing under pay; employes temporarily assigned to lower rated positions or work shall not have their rate reduced except when a freight house clerk reverts to a freight handling position or a storehouse clerk reverts to a storehelper, or a storehelper to a laborer, under Rule 9 of this Agreement."

Clearly if Claimant was "temporarily assigned" to the lower rated position he would not have his rate reduced, but under the provisions of Rule 16 would continue to receive the rate for his higher rated regular position.

The Organization insists that he was "temporarily assigned" within the meaning of Rule 16. Carrier insists that he was a volunteer and that under principles well established by this Board should thus not be considered to have been "assigned."

Carrier has referred to a number of cases decided by this Board which hold that an employe may not, by voluntarily assuming a duty, put Carrier in the position of conferring a benefit that is extended to one who is given an assignment by Carrier. The factual situations in those cases are not identical to this case, but the principle has been followed by many Referees.

In the handling of the case Carrier has made it clear that Claimant was not coerced into accepting the assignment and that he could have refused

This is most distressing and has caused considerable unrest among my people.

It is my belief this should be promptly rectified in view of the many, many years of accepted practice, but in any event I will be glad to confer if you will set time and date for that purpose.

Yours truly,

/s/ J. Connor
General Chairman

cc: Mr. J. C. Brennan, General Foreman
Boston and Maine Corporation
Engine Terminal
150 Causeway Street
Boston, Mass. 02114

cc: Bro. L. A. Henderson, L. C."

Claim was denied by Mr Ahearne in letter dated March 13, 1970 as follows:

"Mr. J. Connor, General Chairman
Brotherhood of Railway, Airline and Steamship Clerks
150 Causeway Street—Room 308
Boston, Massachusetts

Dear Sir:

CLAIM: CL-1082

At conference on March 12, 1970 discussion was had of the claim of Chief Engine Crew Dispatcher Henderson for his regular rate of pay while covering other engine crew dispatchers' work in absence of the regular employee. Claim is made that he should have received his own rate of pay while covering this work on November 21, 22, December 2 and 4 of 1969.

As stated to you at conference, Rule 18(c) of the Clerks' Agreement provides that an employee will be allowed his own rate of pay while covering another position on his rest day.

There is no provision for making such allowance on other than his rest day.

In view of the fact that Saturday, November 22, 1969 was one of his rest days, the difference in the overtime rate allowed and that which should have been paid amounting to \$5.37 will be allowed.

Other claims are declined.

Yours very truly,

/s/ W. J. Ahearne
Director Labor Relations and Personnel"

CARRIER'S STATEMENT OF FACTS: At the Carrier's enginehouse at Boston, Mass., there is twenty-four-hour coverage of engine crew dispatching.

it with impunity. Thus, as far as the volunteer nature of the assignment is concerned, this case is identical to the cases referred to by Carrier.

Claimant must be held to have performed the work in question on strictly a volunteer basis. Therefore he cannot be said to have been "temporarily assigned" to the lower rated position within the meaning of that term as it is used in Rule 16. Rule 16 only requires payment at the higher rate to employes so assigned and the claim must therefore be denied.

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 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 23rd day of July 1971.