

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19362
Docket Number CL-19386

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6954)
that:

1. (A) Carrier violated the currently effective controlling Agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Union Pacific Railroad Company when, on February 28, 1970, Clerk D. A. Parrish was notified and authorized to work the position of Boardman No. 3, hours 12:00 Midnight to 8:00 A.M. and remunerated at the time and one-half rate of that position, \$42.56 in lieu of the rate of his regularly assigned position of Head Boardman, time and one-half rate of which is \$43.04.

(B) Carrier shall now be required to make payment of difference between \$42.56 and \$43.04 to Claimant Parrish.

2. (A) Carrier violated the currently controlling effective Agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Union Pacific Railroad Company, when on March 1, 1970, Clerk W. D. Beith was notified and authorized to work the position of General Clerk No. 8, hours 4:00 P.M. to 12:00 Midnight, and remunerated at the time and one-half rate of that position, \$41.12 in lieu of the rate of his regularly assigned position of Head Yard Clerk No. 13, \$44.48.

(B) Carrier shall now be required to make payment of difference between \$41.12 and \$44.48 to Claimant Beith.

3. (A) Carrier violated the currently effective controlling Agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Union Pacific Railroad Company when, on March 1, 1970, Clerk Tula M. Adams was notified and authorized to work the position of General Clerk No. 15, hours 4:00 P.M. to 12:00 Midnight, and remunerated at the time and one-half rate of that position, \$41.12, in lieu of the rate of her regularly assigned position of Boardman, rate \$43.04.

(B) Carrier shall now be required to make payment of difference between \$41.12 and \$43.04 to Claimant Adams.

OPINION OF BOARD: In each of the three cases cited in the claim the Claimants worked an overtime shift, or on assigned rest day, on a job lower rated than their regular assignments. They were paid at the overtime rate of the position worked. The Petitioner contends that they should have been paid at the overtime rate of their regular assignments. The claim in each instance is for the difference between the overtime rate of the position worked and the overtime rate of their regular assignment.

The Petitioner relies primarily upon Rule 25, which reads:

"Rule 25. Preservation of Rates. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rate on minute basis while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'Temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work, irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute temporary assignment."

The Carrier contends that Rule 25 is intended to protect an employee who is moved from his regularly assigned position to another position during his regular tour of duty. The Carrier also contends that the Claimants worked the additional time of their own volition and were not "assigned" by the Carrier to fill vacancies.

Claims of this nature have been before the Board on numerous occasions and while the awards appear to be somewhat in conflict, we consider the better reasoned ones as those sustaining the claim of the Petitioner and rejecting the "volunteer" theory, such as 9106, 10775, 13679, 17235 and 17618. We will 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;

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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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.