

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19458
Docket Number CL-19333

Arthur W. Devine, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6941)
that:

1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to properly compensate employee E. R. Cary for overtime work performed.

2) Carrier shall now be required to compensate employee E. R. Cary for the difference between the overtime rate of his regular assigned Chief Clerk Position 09530 and the overtime rate of each position filled on overtime on each of the following dates:

| | |
|----------------------|----------------------|
| 1/22/70 - Pos. 09870 | 2/22/70 - Pos. 09480 |
| 1/26/70 - 09910 | 2/26/70 - 07560 |
| 1/28/70 - 09910 | 2/27/70 - 07560 |
| 1/30/70 - 09910 | 2/28/70 - 09470 |
| 2/ 2/70 - 07560 | 3/ 6/70 - 09630 |
| 2/ 4/70 - 09870 | 3/12/70 - 07560 |
| 2/18/70 - 09480 | 3/13/70 - 07560 |
| 2/19/70 - 09480 | 3/19/70 - 07560 |
| | 3/20/70 - 07560 |

OPINION OF BOARD: The issue involved herein is whether or not Carrier violated Rule 17 of the Agreement when it failed to compensate Chief Clerk E. R. Cary at the higher rate of his Chief Clerk position when he filled various positions on an overtime basis on seventeen (17) dates in January, February and March, 1970.

The application of Rule 17 in overtime situations with this Carrier has been the subject of two prior Awards by this Board - Award No. 17618, Referee Dugan, and Award No. 18945, Referee Edgett. Both Awards sustained the claim of Petitioner. We will follow these decisions herein and sustain the Claim.

In addition to defending the claim for all seventeen (17) dates on its merits, Carrier raises procedural questions with respect to eight (8) of the seventeen (17) dates. They argue that the first six (6) dates of the claim - January 22, 26, 28, 30 and February 2 and 4, 1970 are out of time. They argue that two (2) dates - February 22 and 28, 1970 are moot as Claimant received pay at the rate claimed for those dates. From the record before us we conclude that claims

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for the six (6) dates are untimely and claims for the other two (2) dates are moot. Accordingly, claims for these eight (8) dates will be dismissed.

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 in accordance with the Opinion.

A W A R D

Sustained and dismissed as set forth in the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.