

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19497
Docket Number CL-19408

Thomas L. Hayes, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Boston and Maine Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6971)
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 various dates as outlined in Employees Statement of Facts, it refused to properly compensate, Chief Yard Clerk, N.F. Cunningham and Asst. Crew Dispatcher, C. L. Wolfe for overtime performed on said dates.

2. Carrier shall now be required to pay N. F. Cunningham and C. L. Wolfe the difference between the amounts paid by Carrier and the amount properly payable at overtime to a Chief Yard Clerk, Crew Dispatcher and an Asst. Crew Dispatcher for overtime work.

OPINION OF BOARD: Petitioner is claiming that when overtime service is performed on other than their own positions, claimants are to be paid at the higher of the two rates under the Preservation of Rates rule reading:

"Employees 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 employees are filling in for other employees who are continuing under pay; employees 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."

Petitioner urges us to follow Award 17618 (Dugan) where we held:

"Carrier would have us interpolate as a part of said Rule 17 that 'overtime' is excepted from the provisions of said Rule. With this contention of Carrier, we cannot concur. To the contrary, we agree with the Organization that Rule 17 provides that employees will not have their pay rates reduced when assigned to lower rated positions but shall receive the higher rates of pay while occupying such position; and that Claimant properly claimed the higher rate of his regular assigned position when Carrier failed to call him for the lower-rated temporary vacancy. We will therefore sustain the claim."

Award 19362 (Devine) has also been cited to us:

"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."

These Awards would normally be persuasive; however, the record in this dispute shows that the parties under this Agreement have had a long standing written understanding on the method of overtime payment in situations covered by the claim. This understanding states in part:

"If, on the other hand, a man works overtime because his seniority within the district entitles him to prior rights to the overtime and it is not part of his regular work, he shall be paid overtime at the rate of the job on which he works overtime."

This understanding constitutes a local agreed-to interpretation of the rule and we can do nothing but follow it here and deny 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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.