

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19649
Docket Number CL-18595

Melvin Rosenbloom, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and station **Employees**
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-6688)
that:

(a) The Southern Pacific Company violated the current Clerks' **Agree-**
ment when it failed to call unassigned employee E. A. Palacio for a vacancy on
November 25, 1962: and, instead, improperly utilized the services of another
unassigned employee on his sixth day of work in the work week.

(b) The Southern Pacific Company shall now be required to allow E. A.
Palacio eight (8) hours compensation at the applicable pro rata rate of Position
31, Yard Clerk, **Yuma**, Arizona.

OPINION OF BOARD: There is no dispute concerning the facts herein. Neither is
there disagreement over the fact that Carrier violated the
Contract when it mistakenly assigned a" employee who had already performed forty
hours of work in the week involved to fill a vacant position in preference to
Claimant who had worked less than forty hours in that week. The dispute herein
involves the amount of **compensation** to which Claimant is entitled as a result of
the conceded mis-assignment.

On the day in question, a Sunday, there were **two** vacant positions to
be filled, Position No. 31 (**12:00** midnight to 8:00 A.M.) and Position No. 16
(**4:00** P.M. to 12:00 midnight). Mr. C. F. Pruett, a" unassigned clerk who had
worked Position No. 31 on five previous days during that week, was assigned to
that vacancy for the sixth time on that Sunday. Later that day Claimant was
assigned to **work** Position No. 16, a job he had filled once before during that
week. Claimant contends that under Rule 34 he was entitled to be offered the
opportunity to work Position No. 31 in preference to Mr. Pruett because Mr.
Pruett had already worked a full week. Claimant maintains that the injury he
incurred as a result of his not being assigned to work Position No. 31 is the
loss of pay for that entire trick. He asserts that the fact that he worked and
was paid for working Position No. 15 later in that same day is irrelevant and
should not be deemed a mitigating factor with respect **to** the Carrier's respon-
sibility to redress his injury.

The Carrier **confesses** its **error**. Carrier recognizes that the failure
to assign Claimant to Position No. 31 on the day in question **entitled** Claimant
to pay for that trick but argues that the pay which Claimant **received** for working
the other position should be taken into account in assessing Claimant's actual loss.
The difference in pay between the two tricks **amounts** to ninety cents. If Claimant
had been properly assigned in the first place **he** would have been richer by that
amount.

Claimant recognizes that the Rules do not entitle him to assignment to **more** than one eight-hour trick in any given day. His principal point herein is that the Carrier should be more attentive to its obligations under the Contract and should strive to make assignments strictly in accordance with the Rules. He believes that an important principle is involved; that permitting the Carrier to avoid paying Claimant in full for the trick he missed, without deduction for the pay he received for working the other trick, would encourage Carrier to **make** assignments capriciously and without due regard for the Rules. We can appreciate Claimant's point but we do not believe that it has been demonstrated that the mis-assignment in this case was willful, **capricious** or grossly negligent. Under these circumstances, **Claimant's** damage is pecuniary only and can be readily measured by his out-of-pocket loss.

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**.

A W A R D

Claimant to be paid ninety cents - the difference between the pay he received on the day in question and the pay he should have received.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.