

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20214
Docket Number CL-20337

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(The Western Pacific Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood
(CL-7377) that:

1. The Western Pacific Railroad Company violated the current Clerks' Agreement when it failed and **refused** to properly compensate **Mrs. S. Sterni** for service performed on Switching and Transit Clerk Position No. 717, and;

2. **The** Western Pacific Railroad Company **shall** now be required to allow Mrs. **Sterni** eight (8) hours' additional compensation at time **and** one-half rate of Position No. 717 each date February 14, 15, 16, 17, 18, 22, 23, 24, 25, March 1, 2, 3, 6, 7, 8, 9, 10 and 13, 1972.

3. The Western Pacific **Railroad Company** violated the current Clerks' Agreement when it failed to call and use senior **employee** J. W. Ricketts on Switching and Transit Clerk Position No. 717, **and**;

4. The Western Pacific Railroad Company **shall** now be required to **allow** Mr. **Ricketts** eight (8) hours' additional **compensation** at time and one-half **rate of** Switching and Transit Clerk Position No. 717 each date February 16, 17, 23, 24, 25, March 1, 2, 3, 8, 9, 10, 15, 16, 17, 22 and 23, 1972.

OPINION OF BOARD: On the days in question, Claimant **Sterni** was required to work position No. 717. She alleges a violation of the Agreement because she **was** not compensated in accordance with Rule 20(i):

"Rule 20(i) (Effective 9/16/65). If a qualified **employee** is not **available** pursuant to the provisions of Rule 31(f), the **Carrier** may instruct an **employee** to vacate his regular **assignment and work a portion** or **all** of a short vacancy on the same shift for which service he will be paid for actual time worked on the vacancy at the **time** and one-half rate of the **higher** rate of the two positions **involved** and at the straight time rate for **actual** time worked **on** his own assignment; provided, however, that if he **works four**

(4) hours or more on the **vacancy**, he shall be paid at the rate of time and one-half for **all** time worked on both positions."

Carrier denies a violation and states that it properly utilized and compensated **Sterni**, under Article VI of the February 25, 1971 **National** Mediation Agreement:

"Employees will not be required to suspend work during regular hours to absorb overtime.

Note: Under the provisions of this rule, an employee **may** not be requested to **suspend work and** pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an employee **cross** craft lines to assist another employee. It is the intention, however, that an employee may be used to assist another employee during his tour of duty in **the same** office or location where he works and in the **same** seniority district without **penalty**. An employee assisting another employee on a position paying a higher rate will receive the higher **rate** for time worked while assisting such employee, except **that** existing rules which provide for **payment of** the highest **rate** for **entire** tour of duty **will** continue in effect. An employee assisting another **employee** on a position paying the **same** or lower **rate will** not have his **rate** reduced." (underscoring supplied)

After a thorough study of the entire record, cited Awards, and arguments, the **Board** concludes that this dispute must be resolved on a factual issue; dealing with the status of the regular incumbent of position go. 717 on the days **in** question.

The Organization alleges that on each day, Webb (the incumbent of position **No. 717**) was required to abandon her position to devote her entire shift to "**work** tracers", and that Claimant, **Sterni**, was called for the eighteen (18) days to report to **job 717**, and never performed **any** of her regularly assigned duties during that period.

Carrier disagrees with the **Organization's** characterization of Webb's and **Sterni's** status during this period of time. Throughout the handling of the dispute on the property and before this

Board, Carrier has insisted that on each of the days in question, Claimant **Sterni** was used to assist Webb, who, during the period in question, **was** working her own regular assignment.

While it appears that Claimant **Sterni** did not perform any of her regularly **assigned** duties on the eighteen (18) days, that factor alone does not dispose of the issue. From a review of the record as handled on the property, **we** are unable to determine if Webb "abandoned" her position or if she was "assisted" by **Sterni**, while working her regular assignment. The burden of proof rests with the Organization. We are unable to find that it has established, by a preponderance of the evidence, that Webb "abandoned" her position.

Certain testimonial **statements** were included in the Submission. The Carrier objects to **our** consideration of **same** because they **were** not presented prior to Submission of the case to this **Board**. We concur. **For** whatever reason, they were not presented on **the** property, and this **Board** has consistently held that the parties are barred from **introducing** evidence in addition to that adduced on the property. See, for example, Award 18122 (Dorsey) dealing with these same parties.

Claimant **Ricketts**, senior to **Sterni**, asserts that when Carrier "suspended" Webb from position 717, a vacancy **was** created, and he was the senior clerk available to **perform** the work. Our finding of a failure of proof concerning the status of Webb **controls Rickett's 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**

The claims fail for lack of proof.

Award Number 20214
Docket Number CL-20337

Page 4

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Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1974.