

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 21123
Docket Number CL-20912**

Francis x. Quinn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and station Employees
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7658) that:

(1) The carrier violated the rule of the Clerks' Agreement which became effective March 3, 1970, when it, on July 7, 8 and 9, 1973, unilaterally removed the regularly assigned Yard Clerk from his position to fill a vacancy on a Crew Caller position.

(2) The Carrier shall now be required to compensate Mr. M. L. Peterson, Yard Clerk, Dilworth, Minnesota, eight hours' overtime at the yard Clerk's rate for each day; July 7, 8 and 9, 1973.

OPINION OF BOARD: The record reveals that Claimant was assigned to fill the temporary vacancy of crew caller, which pays a lesser rate than Claimant's. However, he was paid the higher rate plus one hour overtime on each of the three dates, as required by Rule 51 of the Agreement.

"RULE 51. PRESERVATION OF RATES

A. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

B. Except as provided in Rule 54, employees required to perform service on a higher rated position for one (1) hour or more on any shift shall be paid the higher rate for the actual time assigned thereto, except that when the time so engaged exceeds four (4) hours, they will be paid the higher rate for the entire day.

C. 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 a temporary assignment.

D. In cases of employees temporarily performing special work not rated or some duties of a previously abolished position, the question of proper rate may be handled under Rules 49 and 50."

Rule 51 clearly gives Carrier the right to temporarily assign an employee to a higher or lower rated position. This fact was clearly confirmed by Emergency Board No. 178.

This matter has been adequately handled by this Board in Awards 20975, 20983 and 20998. There is no merit to 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:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.