

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21378
Docket Number CL-21241

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Robert W. **Blanchette**, Richard C. Bond
(and John H. **McArthur**, **Trustees** of the
(property of **Penn Central** Transportation
(Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood**,
GL-7844, that:

(a) The **Carrier** violated the Rules Agreement dated February 1, 1968 and particularly the Extra Board Agreement #31 and others in effect between the Brotherhood of Railway and Airline and Steamship Clerks, **Freight** Handlers, Express and Station **Employees** and itself, when it failed to call Mr. A. Powell, who is an Extra Board **employee**, for Extra Work, which was performed by Ms. J. Bennett on June 13 and 20, 1972, located in the Crew Dispatcher's Office, 59th Street Yard Office, Chicago, **Illinois**. Ms. **Bennett** performed 4 hours clerical work on July 13, 1972 from 7:59 A.M. to 11:59 A.M. and 5 hours clerical work on July 20, 1972 from 5:59 A.M. to 12:59 P.M. Mr. **Powell** was qualified and available for such Extra Work.

(b) That Mr. **Powell** be compensated with eight (8) hours pay at the proper rate of pay for July 13 and 20, 1972, account of violation of the Rules Agreement.

OPINION OF BOARD: Claimant, who was an Extra Board Employee, was qualified and available for the work in dispute on the two dates in question. **Employee Bennett**, who worked the overtime, was a protected **employee** whose protected rate comprehended performance of 188 hours of service a month. The record indicates that Carrier requested Bennett to work the overtime on the days in question in order to get the required amount of time in for the month. The work she performed was directly related to her **regular** duties.

Petitioner relies on the provisions of Extra Board Agreement #31, which provides:

"Agreement regarding the establishment of Group 1, **Extra List** under the provisions of Rule 5-C-1 with headquarters at 59th Street Crew Dispatchers Office, Chicago, Illinois, to protect vacancies, including vacation vacancies and extra clerical work, except as provided in Rule 4-A-1 (i), accruing to Group 1 employees under the jurisdiction of the Assistant Trainmaster, 59th Street Yard, Chicago, Illinois."

This Extra Board agreement was agreed to pursuant to **Rule 5-C-1** of the applicable Agreement. Petitioner asserts that the protective agreement does not give Carrier the right to ignore the rights of other employes covered **by** the Agreement as a means of working the protected employe **the** requisite guaranteed hours per month. The **Organization** argues that the protected **employe** may obtain protected benefits only to the extent that their seniority **will** entitle **them** to do so. It is contended that the Carrier's interpretation of the rules would obviate the rights of all other employes in favor of those who had been **adversely** affected by a merger or consolidation.

Carrier asserts that it has the right to use Bennett for the **number** of hours, **in** this case 188, that generated the protected rate. This was not disputed by Petitioner. Carrier **argues** that the extra list **only** protects that work which is not covered by other assignments which are made pursuant to schedule rules. As a **further** point, Carrier **relies** on **the** provisions of **Rule 9-A-2**:

"RULE 9-A-2 -- MERGER PROTECTIVE AGREEMENT

(a) **The Merger Protective Agreement** dated May 20, 1964, as amended, is reproduced in Attachment I hereto and is made a part of this **Agreement**. The Implementing Agreement **dated** October 18, 1966 to the Merger Protective Agreement is attached hereto as Attachment II and made a part of this **Agreement**.

(b) In cases where the application of **any** rule of this Agreement is **in** conflict with either Attachment I or II, the appropriate provision of Attachment I or II, as the case **may** be, shall be applicable and supersede such **rule**."

Protected employe Bennett's regular assignment consisted of forty straight time hours per week, or an average of 174 hours per month. **Under** the Merger Protective Agreement Carrier was **entitled** to **work** Bennett for an additional 14 hours each month, if there was work available to be performed. **This** right, of course, entailed overtime work which could probably be claimed in most instances by employes on the Extra Board. Petitioner is quite right in asserting that Carrier's actions in this case adversely affects the rights of all other employes **in** favor of those (in this case Bennett) who were protected employes under the **Merger Protective Agreement**. This conflict was apparently considered by the drafters of the agreements **in** the language provided in Rule 9-A-2 which **clearly** sets forth the **pre-eminence of the Merger Protective Benefits**. **Under** the circumstances, we must conclude that the **use of** Bennett on the dates in question **was** correct **and** no proper basis exists for 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 ove 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:

A. W. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, this 28th day of January 1977.