

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION :

Award Number 21434
Docket Number CL-21375

Irwin M. Lieberman, Referee

(Brotherhood of **Railway**, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employes**
PARTIES TO DISPUTE: (
(The Pittsburgh and **Lake** Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-7957**) that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, when it transferred work from **McKees** Rocks, **Pennsylvania** to the Centralized Agency at Pittsburgh, Pennsylvania.

(b) Clerk Anthony J. **Vallus** be compensated for eight (8) hours at the applicable punitive rate of pay for each of the following dates; viz - April 22, 23, 24, 25, 26, 29, 30, **May** 1, 2, 3, 6, 7, 8, 9, **10, 13,** 14, 15, 16, 17, **20, 21,** 22, 23, 24, 28, **29,** 30, 31, **June** 10, **11,** 12, 13, **14,** 17, 18; 1974.

OPINION OF BOARD: Roth parties to this dispute agree that there was an Agreement violation in this case and the sole issue to be determined **is** the amount of compensation due Claimant.

First it is clear that one issue is the days for which the compensation is due Claimant. Carrier contends that Petitioner is **in** error in claiming additional pay for 36 days since Claimant only performed the work in issue on **11** days. In a previous dispute which was settled by the parties, involving Clerk Rosfeld, he was paid added compensation for all the days on the higher position since there was no record of which days he actually performed the work in question. In this case, the dates **are** known, as specified by **Carrier; there** was no response by Petitioner to this aspect of the case and we find the Carrier's position to be persuasive.

The second issue is the quantum of compensation due Claimant for each of the eleven days. Carrier argues that the Rosfeld settlement on the property is ample precedent for compensation to equal the difference in rates of pay of the two positions. Petitioner contends that the Rosfeld settlement was a compromise and is no **precedent, particularly** in view of past Awards of this **Board**. Carrier also contends that there is no agreement justification for an additional **day's** pay at the punitive rate. It is also noted that there is no penalty provision **in** the applicable Agreement.

While we recognize the **long-standing** divergence of views with respect to damages or penalty payments **in** situations such as this, we believe that each case must **be** evaluated on its own merits. In this case while there was a settlement on the property which would make the reparation the difference in pay between the two positions, there also was a prior award in a related infraction which held that the appropriate compensation was eight hours' pay at the pro rata rate - Award 6308 involving the same parties. We find no support for Petitioner's request for punitive payments for the days involved. However, in view of all the circumstances herein and the earlier case related to the same problem, and in order to preserve the integrity of the Agreement, we find that the proper compensation in this instance should be an additional pro rata **day's** pay for each of the eleven days specified.

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.

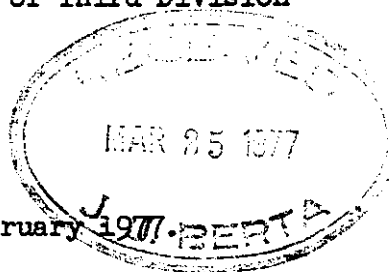
A W A R D

Claim sustained to the **extent** indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary



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