

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 21471
Docket **Number** CL-21061

Lloyd H. Railer, Referee

PARTIES TO DISPUTE: (**Brotherhood** of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(**Express** and Station Employees
(
(The Texas **and Pacific** Railway Compaq

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood**,
GL-7764, that:

1. Carrier violated the Clerks' Rules Agreement, which became effective March 1, **1973**, when it required Clerk, Mr. Floyd **Thompson**, to work position of Material Clerk **No. 104**, Fort Worth, Texas, June **11, 12, 13, 14, 15, 18, 19, 20, 21** and **22, 1973**, and **then** refused to properly compensate him **pursuant** to Rule **21** (a) of the Clerks' Rules **Agreement**.
(Carrier's File **304-348**)

2. Carrier shall now be required to compensate Mr. Floyd **Thompson for** an additional five and one-half hours at the rate of time and one-half for work performed on each of the aforementioned dates.

OPINION OF BOARD: On the claim dates Material Handler **T. Roberts** was on his scheduled vacation. The scheduled hours of his position were **5:00 AM to 1:30 PM, Monday through Friday**. Claimant Floyd Thompson was **regularly assigned** to the position of the General Material Foreman **at the** same location (Fort Worth, Texas) Monday through Friday, with **regularly** assigned hours of **7:30 AM to 4:00 PM**. On the claim dates Mr. Thompson was required to report to work at 5:00 AM -- two and one-half hours prior to his **regularly** assigned **starting** time -- in order to perform work normally performed by the **vacationing Mr. Roberts**. For this additional **work** Mr. Thompson was compensated at time **and one-half** his regular rate as General Material Foreman. The claim is that Mr. Thompson is entitled to eight hours pay at time and one-half, instead of two **and one-half hours** pay at the same overtime **rate, under** the **Basic** Day Rule of the parties' Schedule Agreement. This Rule **21(a)** provides :

"Except as otherwise provided in the **agreements** between the parties, eight consecutive hours or less, exclusive of the meal period, shall constitute a day's work, for which eight hours' **pay will** be allowed."

Since Claimant Thompson worked his **regular** shift each day of the claim in addition to two and one-half **hours before the commencement** of his shift, Carrier applied **Rule 25(a) of the Agreement**, which states in pertinent part:

"...time in excess of eight **(8)** hours, **exclusive** of the meal period, on any day will be considered over-time **and** paid on the minute basis at the rate of time and oae-half."

Carrier states that claimant was paid the overtime rate of his regular assignment for service performed in advance of but continuous with his assigned starting time as provided in Article **10(b)** of the **Vacation Agreement**, which reads:

"Where work of vacationing **employees** is distributed among two **ormore employees**, such **employees** will be paid their own respective rates."

Thus we are confronted with the question as to whether claimant was entitled to **eight** hours' pay at time and one-half rate or the time he actually worked on **overtime--namely two and one-half hours per day**.

This is aot a case in which another employe **claims** he or she should have been used instead of the General Material Foreman. **Also** this is not a case in which the employe who is used could have been available for all the vacationing **employee's** assigned hours of work. We have seen that **after** the first two and one-half hours on the claim dates, the substituting employe **commenced** his **regular** &ties.

We think claimant was properly compensated for the period of time he worked oa the position of the vacationing employe.

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

Award **Number 21471**
Docket **Number CL-21061**

Page 3

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. Pauler*
Executive Secretary

Dated at Chicago, **Illinois**, this 31st day of March 1977.