

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21819
Docket Number CL-21645

James F. **Scearce**, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station **Employees**
(Consolidated Rail Corporation
((**former Penn Central** Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8153, that:

(a) The Carrier violated the Rules Agreement effective February 1, **1968**, when it utilized the services of Clerk George L. Voglund on other **than** his regularly assigned position between the hours of 10:00 A.M. and **12:00** Noon, and again between the hours of **4:30** P.M. and **6:30** P.M. on Saturday and **Sunday** November 18 and **19**, 1972, **again** on **Saturday** and **Sunday**, December 2 and 3, 1972, and still **again** on Saturday and Sunday, December 9 and 10, 1972, and **paid** him for **only** four hours at the applicable overtime rate on each of the six (6) **named** dates.

(b) The Carrier now be required to compensate Clerk George L. Voglund for an additional four (**4**) hours, at the applicable overtime rate for each of the six (6) **named** dates.

OPINION OF BOARD: The issue presented for disposition is whether Claimant is entitled to receive a minimum eight hours at the overtime rate on each of the rest days on which he worked.

The facts giving rise to this dispute show that Carrier had need for the services of a regular **clerical employe** on Saturday and Sunday, on the dates involved, performing some of the same services in connection with **an Amtrak train that were performed Monday through Friday**. Since the regular **employe was not available**, Carrier called Claimant, and we can assume for the **purpose** of this discussion that **Claimant** was the proper **employe**. The Carrier **paid** him under the call **rule**, i.e., two hours **at** the punitive rate for each separate **call**, and **Claimant** is requesting an additional four hours each date or a **minimum** eight-hour day at the overtime rate.

The Organization relies upon certain rules of the Agreement dealing with the establishment of positions and the rate applicable on the **workdays** thereof, whereas the Carrier leans on the specific provisions of **the rest day** rules, **Rules 4-A-2(b)** and 4-A-6. In Award **9967** (Weston), we considered an analogous problem **dealing** with the same contract rules and held:

"Rules 4-A-2(b) and 4-A-6 are **controlling** for they deal **specifically** with the situation where work is **performed** by **an employee** on his rest day. They clearly indicate that it is not necessary to pay a **minimum** of eight hours in **that** situation. What they **do prescribe** is **that a minimum of three** hours be paid with the additional **guaranty**, for those **employees** actually used to 'relieve' **regularly assigned employees**, **that they will** not be released before the end of the regular tour of duty."

The **rules** relied upon by the Carrier are specific and **prevail** under the facts of **this** case. **The claim** cannot be sustained.

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 **Agreement** was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1977.