

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22038
Docket Number CL-21943

George S. Roukis, Referee

PARTIES TO DISPUTE (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(**Employees**
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the **System** Committee of the Brotherhood
(GL-8296)

(a) That Southern Pacific Transportation Company violated the current Clerks' Agreement **when** it failed and refused to compensate **employee** L. G. **Ludden** at the time and one-half rate of his regularly assigned position No. 1, Agent Telegrapher-Clerk **Suisun-Fairfield**, for rest day service performed on lower rated Position No. 12 at Lombard; and,

(b) The **Southern** Pacific Transportation Company shall now be required to allow Mr. L. G. **Ludden** additional compensation based on the difference between the rate of his regular assigned position and the position on which he **rendered** rest-day service.

OPINION OF BOARD: The essential points in this case are:

Claimant **was** called in order of seniority to work a vacant position on his normal rest day at Lombard. He **was paid** on an **overtime** rate at one and one-half times the rate for this position, i.e., \$41.35 daily, which he contends must be the applicable remunerative base. Claimant argues that Rule 7 among others cited is dispositive of this dispute since it explicitly **provides** that employees in such circumstances will be compensated at the higher rate.

The carrier contends **that claimant** was properly paid under Rule 7 which has been in existence **as an** agreement provision since February 1, 1922, the effective date of the parties' first working agreement; that a dispute arose in 1930 as to the proper interpretation of **Rule 7** when the organization filed claim involving **circumstances** identical to those here present, which was disposed of by Decision No. 6 of a special **board** on the property sustaining carrier's position; and that in 1944 petitioner unsuccessfully attempted to overturn Decision No. 6, resulting in Award 2679.

This **Board** has carefully reviewed all pertinent **arguments germane** to this case. We have consistently held that while recognizing the **precedential** force of rules that have been widely adopted in our industry, we will

not attempt to rewrite collective agreements where contract rules or long term understandings are distinguishably articulated 2nd observed.

We certainly recognize that Decision No. 6 is out of harmony with prevailing practice. But it is the law regarding the parties' specific relationship on this property. Conversely, mindful of the reality of decision 21 lawfact distinctions, we believe that the construction given by this Division's Award 2679 respecting the implicit contents of successor contracts is apropos the bona fides of this claim. Quoting in part from this case, we stated "we think the rule is that where a portion of a written contract is carried forward verbatim into a new contract all interpretations of the old agreement are carried forward into the new unless there be a declared intent to the contrary." We find nothing in the record to support a different conclusion.

Accordingly having thus found that Decision No. 6 is controlling, we must, of necessity, affirm that this decision is directly relevant to this property only and must not disturb or contravene time generally accepted application of other like rules on other properties. If the parties wish to change this construction, they must do so through the collective bargaining process.

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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.

