

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22042
Docket Number CL-22101

David P. Twomey, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express** and Station **Employees**
PARTIES TO DISPUTE: {
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8412) that:

1. The Carrier violated the effective Clerks' **Agreement** when it called **P. Malis** on one of his assigned rest days on February 1 and February 21, 1976, to **fill temporary** vacancies on positions with a lesser rate of pay than his own and failed to properly compensate him for eight (8) hours' pay at the **time** and one-half rate of his **regularly** assigned position.

2. The Carrier shall compensate Clerk' **P. Malis** for the difference between eight (8) hours' pay at the time and **one-half** rate of Position No. **GT-1174R**, his regular **assignment** and Position No. **GT-121**, the assignment he filled for **February 1, 1976**.

3. The Carrier shall also compensate Clerk **P. Malis** for the difference between eight (8) hours' pay at the time and one-half of Position No. **GT-1174R** and Position No. **GT-434** for **February 21, 1976**.

OPINION OF BOARD: On February 1, 1976, the **Claimant**, Clerk **P. Malis**, was called on one of his assigned **rest** days to fill a **temporary** vacancy on **Position GT-121**. **GT-121** has a daily rate of **pay** of \$47.2146. On February 21, 1976 **Mr. Malis** was called on one of his rest days to fill a temporary vacancy on Position **GT-434**. **GT-434** has a daily rate of pay of \$47.2119. For his service on these dates, **Mr. Malis** was **compensated** at the **time** and one-half rate of the position to which he was assigned. The Organization contends that under Rule 53 of the **Agreement**, the **Claimant** should have been **compensated** at the **time** and one-half rate of his **regular** assignment, **GT-1174R**, which has a daily rate of pay of \$55.7737.

By letter dated September 16, 1942 the then General Chairman agreed to an interpretation of the Agreement concerning the rate of pay

due an **employe** in the overtime situation where a Roundhouse Clerk doubled over as an Engine Crew Caller, and was paid at the Caller's rate rather than his Clerk's rate, which **was considerably** higher. Initially the Organization had argued that Rule 53 was **not** complied with. Thereafter, however, the General Chairman in the September 16, 1942 letter agreed as follows:

"We agree that an **employe** is entitled to receive the punitive rate or the position occupied on such second tour **of duty.**" (emphasis added)

On August of 1949 a succeeding General Chairman recognized that emergency overtime **performed** by other than the regular incumbent would **be** worked at the rate of the position, and without regard to the regular rate of pay of the particular **employe** to whom the **overtime** was assigned. **The** Carrier asserted on the property and before **the Board** that the practice and the application of the 1942 Settlement for over **34 years** in duration was that overtime performed by other **than** the regular incumbent would be worked at the rate of the position, without regard to the regular rate of pay of the particular employe performing the work. **The Carrier asserts** that the parties have consistently applied the interpretation on a uniform basis for over **34 years**. These assertions **have** never been denied.

We are most impressed by the logic of the Awards involving other railroad properties cited to us by the Organization. However, these Awards are inapplicable to this **particular** railroad, in view of the 1942 Settlement and the **34** years of paying for overtime worked by other than the regular incumbent of the position at the punitive rate **of** the position worked, without regard to the regular rate of **pay of** the **employe** performing the overtime on rest days or during a second tour in twenty-four hours.

The Organization contends that one of the purposes of the claim is to right that palpable wrong committed by the former **General Chairman 35 years ago.** **The** appropriate **method** for modifying the Agreement of the parties is set forth in **Rule 70** of the Agreement.

We **shall** deny this **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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulus
Executive Secretary

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

