

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 **employee** 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 **employee** 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 **employee** 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 employee performing the work.** **The Carrier asserts** that the parties have consistently applied the interpretation on a uniform basis for **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 employee** 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 **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 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.

