

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22058
Docket Number CL-21912

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and
(Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8263, that:

1) Carrier violated the provisions of the Clerks' Rules Agreement at Sioux Falls, S.D. on March 28, 1975 when it failed to call employe E. C. Johnston to perform the work of his position on a holiday.

2) Carrier shall now be required to compensate employe E. C. Johnston for five hours and twenty minutes (5'20") at the rate of time and one-half of his position for a call on March 28, 1975.

OPINION OF BOARD: This case involves holiday work on the Good Friday Holiday, March 28, 1975. Claimant, the Cashier at Sioux Falls, S.D., alleges that he should have been worked account he was senior to other clerks who were worked and that duties he normally performs during his regular work week were performed on the holiday. The rules that control resolution of this dispute are:

Rule 32 - Overtime

(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35(b) (if such holiday falls within the employe's work week) the employe regularly assigned to position on which the overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employe who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work.

(g) When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, **employees** will be assigned to such overtime in accordance with seniority, fitness and ability, first from the sub-division of the department wherein the work occurs and secondly, from the entire department.

Memorandum of Agreement No. 74

As between the undersigned, the following is agreed to in connection with the application of Rules 32(f) and 32(g).

If the duties to be performed on an overtime basis cannot be identified with a specific position, **employees** will be called **therefor** in accordance with seniority, fitness and ability, first from the Sub-Division and secondly, from the Department.

Decision No. 2
40 Hour Week Committee

Where work is required to be performed on a holiday which is not a part of any **assignment**, the regular **employee** will be used.

Examination of the record develops that there is no dispute that Claimant was senior to the chief clerk, an employee who was required to work on the holiday. The record also discloses that no duties of cashiering were performed by any clerk on the holiday. Duties of the chief clerk were performed by him as the regular incumbent of the chief clerk's position **on** the holiday. In addition, the chief clerk performed a limited amount of billing work which is **admitted** as being **common** to both positions *during their regular workweeks*. The performance of this common work, the Organization argues, triggered an agreement violation and the senior **employee**, the cashier, should have been called.

Decision No. 2 of the 40 **Hour Week Committee** makes it clear that seniority takes a secondary role to duties when work is to be performed on a holiday. The **employee** whose regular duties are required on a holiday has first preference to the work.

In this case, the work performed was that of the chief clerk, not the cashier. The chief clerk, therefore, was the one to be given preference for the performance of this work.

The question then arises: was it improper under these circumstances to have the chief clerk additionally perform certain work that was **commonly** performed by the chief clerk and the cashier during their regular workweeks? We think not. During a normal workweek the chief clerk would have performed the **common** work without complaint in addition to his chief clerk's duties. The rules relied upon do not prohibit this same conduct on a holiday. The claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties wived 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. Pauline
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.