

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22134**  
Docket Number CL-21983

David P. Twomey, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks. **Freight** Handlers,  
( **Express and Station Employees**

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company  
( (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
668311, **that:**

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement **when** it failed and refused to allow Mr. D. J. **Pengray** fifty-nine (59) minutes compensation at **the time** and **one-half** rate of Position No. 48 November 24, 1975; **and,**

The Southern Pacific Transportation Company shall now be required to allow **Mr. D. J. Pengray** fifty-nine (59) **minutes** compensation at the wertime rate of Position No. 48.

OPINION OF BOARD: The Claimant, D. J. **Pengray**, was regularly assigned to Position No. 52. Train Clerk. at Bay Street, West **Oakland**, hours 3:00 P.M. to **11:00** P.M., **with Saturday and Sunday** as rest days. On **November** 24, 1975, the Claimant fulfilled his regular assignment 3:00 P.M. to 11:00 P.M. On this same date a vacancy existed on Position No. 48, Train Clerk, hours **11:59** P.M. to **7:59** A.M. There were no qualified guaranteed extra board **employees** available to fill **the** vacancy, and an attempt to fill the vacancy on a volunteer wertime basis was not successful. The **Claimant** was **then** called and required to fill the wertime vacancy in accordance with Item 3 of Letter Agreement dated March 11, 1971. The Claimant was paid eight hours at **the over-**time rate of Position No. 48. The claim **in** the instant case is for fifty-nine **minutes' overtime** for **November** 24, 1975, which represents the period of time between the ending of **the** Claimant's regular assignment and the starting **time** of the overtime vacancy.

Rule 21 states in pertinent part:

"(b) An **employee** who **has** completed his regular tour of duty and has been released, and who is required to return for **further** service within less than one (1) hour following such release, **shall** be compensated as if on continuous duty."

The Carrier contends in its Submission that its records show that **employees** working two shifts with an interval of less than one hour between shifts have never been paid for the time between shifts under Rule 21(b). No evidence was introduced at any time to support this assertion, and as such it cannot be considered a valid defense for the Carrier. The Carrier contends that Rule 21(b) **would** be involved only if an **employee** were used on a call basis, **i. e.**, for **further** service attached to his **own** assignment, but not for a call to fill a completely separate vacancy on an **overtime** basis such as the instant case. We find no such restriction in Rule 21(b) or the entirety of **Rule** 21 and the March 11, 1971 Letter Agreement. We find that the language of Rule 21(b) is clear and precise. The rule does not qualify the language "who is required to return for further service," and for this Board to do so would be to add language to the rule which the parties did not choose to do. We shall sustain 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 violated.

**A W A R D**

**Claim sustained.**



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

**ATTEST:** *A.W. Paulose*  
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of **June 1978**.