NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22410

THIRD DIVISION

Docket Number CL-21796

Herbert L. Marx, Jr., Referee

PANTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8183):

(a) The Southern Pacific Transportation Company violated the Clerks' Agreement on November 14, 1974 at Brooklyn, Oregon, when it arbitrarily required Train Clerk J. H. McCauley, Jr., to abandon his position, Train Clerk No. 119, to work Assistant Chief Clerk Position No. 103, and called Guaranteed Extra Board Clerk R. G. Killam to work Position No. 119; notwithstanding Ms. M. M. Schwandt, Assistant Chief Clerk No. 102, was available and willing to double on Position No. 103; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Ms. M. M. Schwandt eight (8) hours' compensation at the time and one-half rate of Position No. 103 for November 14, 1974.

OPINION OF BOARD: Claimant was the regularly assigned incumbent of Assistant Chief Clerk Position No. 102, with hours from 4 p.m. to Midnight. J. W. leach was the regularly assigned incumbent of Assistant Chief Clerk Position No. 103, with hours from 8 a.m. to 4 p.m. On November 14, 1974, Leach laid off his position for the day. J. H. McCauley, Jr. was the incumbent of Train Clerk Position No. 119, also working from 8 a.m. to 4 p.m. To fill the vacancy caused by Leach's absence, and in the unavailability of a Guaranteed Extra Clerk (not in dispute here), McCauley was transferred to Leach's position. A Guaranteed Extra Clerk was called to fill McCauley's position.

Claimant alleges that she was entitled to fill the one-day vacancy caused by Leach's absence and that she shouid have been called to "double over" to fill that position as well as her own.

The principal Agreement provision applicable here is Rule 22, which reads as follows:

"RULE 22
ABSORBING OVERTIME

Employes shall not be required to suspend work during regular hours to absorb overtime.

NOTE: Under the provisions of this rule, an employe may not be requested to suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an employe cross craft lines to assist another employe. It is the intention, however, that an employe may be used to assist another employe during his tour of duty in the same office or location where he works and in the same seniority district without penalty. An employe assisting another employe on a position paying a higher rate will receive the higher rate for time worked while assisting such employe, except that existing rules which provide for payment of the highest rate for entire tour of duty will continue in effect. An employe assisting another employe on a position payingthe same or lower rate will not have his rate reduced.

(From Article VI of February 25, 1971, National Agreement) See Appendix for J. P. Hilts' letter February 25, 1971, about application of Article VI,."

Prior to 1971, when the above "NOTE" was added, the rule read in its entirety:

"Employes will not be required to suspend work during regular hours to absorb overtime."

While the parties make reference to other rules, the principal difference between the Carrier and the Organization is their interpretation of Rule 22, as amended by the "Note" -in 1971. Numerous previous awards were cited by both parties, but, because of the significant change in 1971, those referring to matters prior to then have no significant bearing on resolution of this matter.

The Carrier argues that the "Note" serves the purpose of clarifying and severely limiting previous applications of Rule 22. The rule continues to prohibit alternation of an employe's schedule during "his" regular tour of duty to avoid the payment of wages at overtime rate based on hours previously worked or subsequently to be worked "by him". But, argues the Carrier, the "Note" makes it clear that the use of an employe during his regular tour of duty in the position of another employe (subject to applicable rates of pay and not crossing craft lines) is no longer prevented by interpretations given prior to 1971 in the basic one-sentence rule. This change, argues the Carrier, was among a number of work-rule liberalizations agreed to by the Organization in 1971 in connection with the wage increase then negotiated.

The Organization agrees that Rule 22 was modified by the "Note", but it does not agree that it was changed as broadly as the *Carrier states it.* The Organization points to the last two sentences of the "Note" which are limited exclusively to references to one employe "assisting" another employe in the latter's work. Since the present dispute refers to replacing rather than assisting another employe, the "Note" does not sanction any diminution of the previous rule *against* absorption of overtime, according to the Organization.

The Board must therefore take another look at the "Note." The Board finds that the first sentence restates the basic Rule 22 so that it concerns the reduction of an employe's regular duty hours for the purpose of defeating overtime payment to him for other hours before or after the regular tour of duty. For the claimant in this dispute, no such reduction was made. The Organization would then have the Board read the references to assisting other employes as if these three sentences represented the entire concession made by the Organization in 1971 to the basic rule.

The Board cannot agree. This is not a case of the expression of one thing ("assisting") excluding all others, because such expression immediately follows, as already noted above, the general statement that the absorption of overtime rule is limited to an employe's own hours. This cannot be defeated by the following specifications as to craft-line restrictions and as to conditions for one employe assisting another (and the proper pay rates therefor). The Board reads these separately from the first sentence of the "Note."

The Board plows no new ground in this award. Awards No. 21639 (Smedley) and No. 21689 (Sickles), both dealing with post-1971 situations, reach the same conclusions as to Rule 22 and its "Note." In sum, there is no Agreement prohibition of the action taken herein by the Carrier.

References to Rule 7 (Preservation of Rates), Rule 26 (Seniority Datum), and Rule 34 (Short Vacancies) are not determinative as to the central issue here.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1979.