

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22757
Docket Number CL-22717

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks. **Freight** Handlers.,
(Express and Station **Employees**
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8647) that:

(a) The Southern Pacific Transportation **Company** violated the Clerks Agreement on March 25 and 26, 1975, at Roseville, **California**, when it called **Mr.** Steve Morris to fill Position **No.** 42, Train Clerk, and subsequently refused to properly compensate Clerk **Morris** under the rules of the Agreement; and,

(b) The Southern Pacific Transportation **Company** shall now be required to allow Mr. Steve **Morris** eight (8) hours additional compensation at the overtime **rate** of Position No. 42, Train Clerk, for March 25 and eight (8) hours additional compensation at the straight time Guaranteed Extra Board rate for **March 26**, 1975. In addition, **Claimant** is to be allowed interest at the rate of two percent (2%) per month, compounded monthly, **commencing March 26**, 1975, and continuing until the basic claim has **been** fully adjudicated.

OPINION OF BOARD: Claimant, Steve Morris, was regularly assigned to the Guaranteed Extra Board at **Roseville**, California, working various positions and hours as required by the Agreement. **Claimant** worked Position **No.** 40, Train Clerk, hours 7:00 A.M. to 3:00 P.M., on Tuesday, **March 25**, 1975. 'do was then released back to the Guaranteed Extra Board.

On Wednesday, March **26**, 1975, a vacancy existed on Position No. 8, Train Clerk, **hours** 12:00 midnight to **8:00** A.M. Carrier assigned Clerk R. L. **Ratzlaff** to fill Position No. 8. Ratzlaff was removed at 12:00 midnight on March 26, 1975, from Position No. 42, Train Clerk, hours **11:00** P.M. to **7:00** A.M. **Ratzlaff's** assignment to Position No. 8 created a vacancy in Position No. 42. **Claimant** was instructed to report to fill this vacancy at midnight on **March 26**, 1975. He worked

Position No. 42 from 12:00 midnight to 7:00 A.M. and was allowed **seven** hours at the straight **time** rate of Position No. 42, plus one hour paid for, but not worked, at the same rate from 7:00 A.M. to 8:00 A.M. for a total of eight hours.

The Organization **claims** that Carrier violated the Agreement between the parties by failing to properly compensate Claimant for **March 25** and 26, 1975. It contends that Claimant was entitled to **work** Position 42 as it was scheduled, **11:00 P.M. - 7:00 A.M.** The Organization argues that had this been the case, Claimant would have received 8 hours **at** the overtime rate since this would have been **Morris'** second start on March 25, 1975. The Organization maintains that Carrier's sole purpose in changing the starting time was to avoid paying **overtime** as is required by the Agreement. It asks that Morris be allowed eight **(8)** hours additional compensation at the overtime rate of Position **No. 42**, Train Clerk, for **March 25**, 1975, and eight **(8)** hours additional **compensation** at the straight time Guaranteed **Extra** Board rate for **March 26**, 1975. This Board **is** also asked to award interest to **Claimant**.

Carrier, on the other hand, insists that it has **not** violated the Agreement. Carrier argues that **Claimant's** starting time was 12:00 midnight. Therefore, it contends that **Claimant** did not work two assignments on March 25, 1975. Carrier also argues that the starting time for Position No. 42 was not changed. The incumbent, **Ratzlaff**, worked the first hour and then Claimant worked the remainder of the shift. Carrier claims that while Claimant's starting time was 12:00 midnight, the position's was **11:00 P.M.** as **bulletined**. Finally, Carrier **maintains** that a letter of **understanding**, dated October 29, 1959, permitted what occurred here - using an available extra **employee** to provide relief for the remainder of a shift, and paying the **employee** eight hours at the applicable rate.

Claimant was assigned to Position No. 42. It had a fixed *regular starting time* of **11:00 P.M.** Pursuant to **Rule 16**, a "regular starting **time** shall not be changed without at least five **(5)** working **days'** written advance notice to **employees** affected." Carrier did not provide the required notice of its intent to change the **starting time**. Yet, Carrier did alter the starting of Position No. 42 on March **25-26**, 1975 for **Claimant**. By having Clerk **Ratzlaff** cover the **position** for **one** hour and only then allowing Claimant to work, the effect upon Claimant was to change the starting **time** of Position No. 42.

This is unacceptable. **Claimant** had a demand right under **Rule** 16 to report to work at **11:00 P.M.** That is, he was entitled to fill Position No. 42 **as** it was bulletined - including the fixed starting time.

Carrier also attempted to base its action in dividing Position No. 42 on a letter of understanding, dated October 29, 1959. This contention must be rejected. The circumstances in this case are not those which that letter of understanding attempts to address. It is inapplicable to facts presented here.

The final question is that of the appropriate compensation. Under **Rule** 20(a), Claimant should have been paid time and one half for all work he performed between 3:00 P.M. on March 25, 1975 and 7:00 A.M. on **March** 26, 1975. We will sustain the claim to that extent. In all other aspects, the claim is denied.

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 to the extent **and in** the manner set forth **in Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, *this* 29th day of February 1980.