

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22807
Docket Number **CL-22487**

Kay **McMurray**, Referee

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

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**CL-8541**)
that:

1. Carrier violated the Agreement between the parties when it failed and refused to allow clerical employee, J. **E.** Brown, an additional day's pay at the rate of her regular assigned position for May 20, 1977, after it had required claimant to work a position subject to the Hours of Service, **Law**, thus, prohibiting **her from** protecting her regular **assignment** on May 20, 1977.

2. Carrier shall now be required to allow J. E. **Brown** the **compensation** she would have received for her regular assignment **on May** 20, 1977, which was a day's pay at the rate of **her** regular assigned car clerk position No. 76 in the Springfield Terminal at Springfield, Missouri.

OPINION OF BOARD: Claimant was regularly assigned as a car clerk in the terminal at Springfield, Missouri. **Her** regular hours were **3:59** PM to **11:59** PM. On the date **in** question she was called by the carrier to fill a telegrapher position starting at 7:00 AM. **Having** fulfilled that **assignment**, she was constrained by the Hours of Service law **from** working her **normal** shift on the **same** day. The claim is for pay for the normal shift she was **unable** to work.

The carrier states that claimant was offered **the assignment** in line with her seniority **and accepted** the offer without question. The Organization does not **rebut** this position except for a brief speculation that she **might** have subjected herself to **discipline** if she had refused. There is no probative evidence in the record to indicate that the **claimant** was assigned contrary to her desires. The Organization does not point to any rule which **would** be violated by acceptance of an assignment under such conditions.

The record reveals that claimant was paid the overtime rate in the position of telegrapher. She worked four days at her regular position and one day at the overtime rate during the five-day week. The **net** result in **terms** of compensation was **5-1/2** days pay for the five-day week.

The Organization cites several previous awards of the Board which granted **similar** claim. The majority dealt only with the problem of keeping the **employee** whole with respect to compensation. There is no such problem in **the** case at **bar**.

This Board finds that acceptance of the **assignment** was voluntary. The agreement was not violated **and the** claimant had a *net* gain in compensation.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.

