

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22968
Docket Number CL-22939

Martin F. **Scheinman**, Referee

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

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8809)
that:

1. Carrier violated the agreement between the parties when it failed and refused to properly compensate clerical employee, E. L. Langston, for service performed on July 17 and 18, 1978.

2. Carrier shall now be required to compensate clerk E. L. Langston for the difference in pay between the prorata rate of transportation clerk position No. 25 and the rate of time and one-half the prorata rate of position No. 25 for each date of July 17 and 18, 1978.

OPINION OF BOARD: Claimant, E. L. Langston, was an extra list **employee** at the time this claim arose. A vacancy was created on position No. 25 which is a transportation clerk's position, by the regular assigned incumbent laying off on July 15 and 16, 1978. **The** rest days of position No. 25 are Monday and Tuesday. These rest days are incorporated into relief position No. 32.

On Monday, July 17 and Tuesday, July 18, 1978, the regular assigned incumbent of relief position No. 32 failed to report for work. **Claimant** was called to protect this two day vacancy. She then worked position No. 25 from July 19, 1978 through July 30, 1978. (Claimant received overtime pay for July 24 and 25).

The Organization contends that Claimant should have been paid time and one-half for July 17 and 18, 1978 instead of the straight time rate. The **crux** of the **Employes'** claim is that July 17 and 18, 1978 **were** Claimant's rest days once she assumed the assignment of the regular incumbent of position No. 25. It cites several rules to support its contention.

Carrier, on the other hand, maintains that it did not violate the Agreement. It argues that Claimant was originally called from **the Extra** List only to protect a two day vacancy after which Claimant was released back to

the Extra List. It was not until 10:00 A.M. on July 17 that Claimant was called to fill Relief position No. 32. Carrier further contends that the subsequent two week vacancy on position No. 25 was not known until July 18, 1979. Thus, Carrier argues that although Claimant did eventually work position No. 25 for 12 days she was called to do so on subsequent occasion and not **on** July 15th. In its view, Claimant on July 15th was called only to protect a two day vacancy. This, Carrier insists, did not entitle her to the July 17 and **18** rest days of position No. 25.

An analysis of the evidence indicates that Claimant **was** assigned to position No. 25 on July 15th and 16th. Carrier then used her again on that position after the position's rest days.

Rule **36½(h)** is the applicable rule. It states:

"Rest Days of Extra or Furloughed Employees -
To the extent extra or furloughed **employees** may be utilized under applicable agreements or practices, their days off need not be consecutive; however, if they take the assignment of a regular **employee** they will have as their **days** off the regular **days** off of that **assignment**."
(Emphasis added)

Rule **36½(h)** is clear and unambiguous. It provides that the **employee** taking over a position is entitled to the rest days of that position. As such, July 17 and 18 became Claimant's rest days. When she worked those days she was entitled to overtime pay for those days. We will sustain the 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.

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Claim sustained.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.