

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23223**  
Docket Number CL-23142

Arnold **Ordman**, Referee

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

PARTIES TO DISPUTE: (

-(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8885)  
**that:**

(a) The Carrier violated the Clerks' Agreement particularly **Rule 39½** paragraph 2 **and** others **when** it failed and refused to properly compensate Carol L. Bolling for February 16, 1976, a holiday.

(b) That Carol L. Bolling be compensated \$2.58 for February 16, 1976, the difference for rate between Interchange and Record **Clerk** (\$48.57) and Mail Clerk (\$45.99).

OPINION OF BOARD: Inasmuch as no prior awards have **been** cited relative to the instant case, it appears that we have before us a case of first impression. We are called upon to interpret **the** meaning and intent of a portion of **Rule 39½(a)2.** of the Agreement which reads, **in** pertinent part, as follows:

"... If the holiday falls on a day other than a day **on** which he otherwise would have worked, he shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him prior to the holiday."

The facts are undisputed. The **parties** are in **agreement** that Claimant, an "other than regularly assigned employe," qualified for and was paid "holiday pay" for the legal holiday which fell on February 16, 1976. The dispute to be resolved is the amount of compensation **due** Claimant as "holiday **pay**" for February 16, 1976.

**Claimant** was called on February 12, 1976 to fill Mail Clerk Position A-64 which position carries a rate of \$45.99 per day. During the course of Claimant's employment that date, Carrier called upon Claimant to suspend work on the Mail Clerk Position and assist another **employe** on the position of Interchange and Record Clerk which position pays a higher rate, \$48.57 **per** day.

Because of-Agreement rules, Claimant received the higher rate, i.e. \$48.57, for the entire tour of duty on February 12, 1976. It is that rate which Claimant seeks as "holiday pay" for February 16, 1976, the first day ~~she worked~~ after February 12, 1976. Carrier basically argues that the additional \$2.58 paid to Claimant for assisting on work of the higher rated position on February 12, 1976 was not part of ~~the~~ rate of pay, but a penalty. We hold that it was not a **penalty in** the sense that overtime, or punitive pay, is 8 penalty, and we **must** look to the Agreement for guidance.

**Rule 37--Absorbing** Overtime has a note which reads, in pertinent part:

"... 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...." (Underscoring added)

The "existing rule" in this Agreement, which provided payment at the higher rate for the **Claimant's** entire tour of duty on February 12, 1976, is Rule 45--Reservation of Fates which reads, in pertinent part:

"(a) **Employes** temporarily or permanently assigned to higher rated positions for a full day or less shall receive the higher rates for the full day. Employes temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary **assignment**' contemplates the fulfillment of the duties and responsibilities of the position during the time involved, whether the regular occupant of a position is absent or whether the temporary assignee covers the position irrespective of the presence of the regular **employe**...." (Underscoring added)

From the record it appears that **Claimant** was paid, on February 12, 1976, because she performed work of the higher rated Interchange and Record Clerk Position. The Interchange **and** Record Clerk Position is thus "the position on which compensation last accrued--prior to the holiday" and 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.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:   
Executive Secretary

Dated at Chicago, Illinois, this 16th day of **March 1981.**