

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23397
Docket Number CL-23145

Arnold Ordman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8884) that:

1. Carrier violated the Clerks' Rules Agreement at Deer Lodge, Montana when it failed and/or refused to properly compensate employes R. F. Brand on February 16, 17, 28 and March 1, 1978.

2. Carrier shall now be required to compensate employe R. F. Brand two (2) hours at the pro rata rate of Chief Clerk Position No. 74000 on February 16, 1978; eight (8) hours at the pro rata rate of Chief Clerk Position No. 74000 on February 17, 1978; eight hours at the pro rata rate of Chief Clerk Position No. 51300 on February 28, 1978; and two (2) hours at the pro rata rate of Chief Clerk Position No. 51300 on March 1, 1978.

3. Carrier shall further be required to reimburse employe R. F. Brand for mileage for two (2) miles when required to use his own transportation to travel between work locations.

OPINION OF BOARD: On four different occasions between February 16, 1978 and March 1, 1978, employe R. F. Brand, who held a Steno-Clerk position, was assigned to assist on Chief Clerk positions. In due course Organization submitted claims that (1) Carrier violated the Clerks' Rules Agreement when it failed and/or refused to properly compensate employe Brand on these occasions; (2) that Carrier be required to compensate employe Brand for his work on these occasions at the pro rata rate of the Chief Clerks' positions involved; and (3) that Carrier be further required to reimburse employe Brand for mileage when he was required to use his own transportation to travel between work locations. In the proceedings antecedent hereto, Carrier denied the claims.

Organization contends that the claim for higher compensation was warranted under the facts of this case and invokes Rule 17 of the Agreement dealing with Preservation of Rates and Rule 32 dealing with Overtime. Carrier protests that employe Brand at none of the claimed occasions "assisted" on the named Chief Clerks' positions but merely fulfilled the duties of his regularly assigned position.

We find upon our review of the record that the evidence on this phase of the case supports the position of Organization. We therefore sustain the claim that Carrier failed to properly compensate employe Brand when it withheld compensation at the Chief Clerks' pro rata rate for work Brand performed when he assisted on Chief Clerks' positions.

It would normally follow that Claim 2, requiring that proper compensation be paid, be sustained also. However, upon scrutiny of the record, it appears that the compensation sought in Claim 2 is excessive. Rule 32(h) mandates, in relevant part, that:

"An employe assisting another employe on a position paying a higher rate will receive the higher rate for time worked while assisting such employe . . ."
(Underlining supplied.)

To the extent Claim 2 exceeds this mandate, Claim 2 will be modified. In other respects Claim 2 will be sustained.

Claim 3, embodying a request for mileage reimbursement for two (2) miles, will be denied. The record of this case fails to supply the necessary factual support to substantiate the mileage 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 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 violated.

A W A R D

claim 1 sustained.

Claim 2 sustained as modified.

Claim 3 denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981.