

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24402**
Docket Number **CL-24442**

Robert **Silagi**, Referee

PARTIES TO DISPUTE:

{Brotherhood of Railway, Airline and Steamship Clerks,
Freight **Handlers**, Express and Station **Employees**
{**Baltimore and Ohio Railroad Company**

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood (GL-9540)
that:

(1) The Carrier violated the **terms** of the Clerk-Telegrapher Agreement between the Parties when, **on July 14, 1980**, regularly assigned (11:00 PM to 7:00 AM) third-shift Operator C. Lay, **Hamilton, Ohio**, while on duty performing work of his regular **position**, was diverted to perform service as an extra employee at Cottage Grwe, **Indiana**, 12 Midnight to 8:00 AM, and

(2) As a result of such **diversion**, Carrier shall be required to compensate Claimant C. **Lay**, regularly assigned third-shift Operator at Hamilton, Ohio, an **additional** eight (8) hours' pay at punitive rate for the date of July 14, 1980.

OPINION OF BOARD: Operator C. **H. Lay** was regularly assigned at the Hamilton, Ohio, Depot, 11 P.M. to 7 A.M. On July 14, 1980, shortly after reporting for duty, Claimant was sent to Cottage Grove, Indiana, about 22 miles away, to **handle the** necessary work at a temporary train order office that had to be opened because of a **derailment**. Claimant worked at Cottage Grove from midnight to 8 A.M. He was compensated at his regular rate of pay, straight time for the hours 11 P.M. to 7 A.M. and **overtime** for one hour 7 A.M. to 8 A.M. The Organization demands an additional 8 hours' pay at punitive rate for Claimant. In support of its demand the Organization cites following Rules of the Agreement:

Rule 2 - Day's Work, simply provides that an **employee** is entitled to a minimum of 8 hours' pay for 8 hours of consecutive work, or less. Claimant received compensation for 9 hours on the date of the claim.

Rule 4 - Overtime. Rule 4(a), the pertinent **provision** herein, states that time worked preceding or following a regular 8 hour work period shall be compensated at **time** and one-half. Nothing in Rule k(a), nor in any other subdivision of the rule, supports the demand for 8 hours' pay for Claimant's services at Hamilton and an additional 8 hours' pay for **his** services at Cottage Grove.

Rule 24 - Short Vacancies Not Requiring Bulletin, deals with filling vacancies that are not advertised. Note (a) to Rule 24 allows an **employee** "to work a vacancy **under** emergency conditions when such vacancy cannot be filled in any other manner."

The record shows that there was no **position in** existence et Cottage hove during the hours involved, hence there was no **"vacancy"** to be filled. No other **employees** were available et the time of the emergency due to the derailment. However, even if **there were a vacancy and had Claimant** been treated es en **employee removed** from his regular **assignment** to fill a vacancy, he was paid exactly es required by Rule 24 Note (a). (Award 22186-Twomey).

Since Claimant was paid correctly, his claim for **additional compensation** must be denied.

FINDINGS: The **Third** Division of the Adjustment Board, upon the whole record end all the evidence, **finds** end holds:

That the parties waived oral hearing;

That the Carrier end the **Employees** involved in this dispute are respectively Carrier **and Employees within** the meaning of the Railway **Labor** Act, es approved **June 21, 1934;**

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; end

That the **Agreement** was cot **violated.**

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment **Board**

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated et Chicago, Illinois, this 26th day of **May 1983.**

