

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25232
Docket Number CL-24959

I. M. *Lieberman*, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employes**
PARTIES TO DISPUTE: (
(Maine Central **Railroad Company/Portland** Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9697**)
that:

1. Carrier violated the Agreement between the Parties when on
December 15 and 16, 1980, Clerk Wayne Bubar, was required to work his two (2)
rest days, but, was only paid straight time.

2. Carrier shall compensate Wayne Bubar, Clerk, **Rigby**, Maine, four
(4) hours punitive pay each day, December 15 and 16, 1980, because he was
required to work his rest days at Carrier's request.

OPINION OF BOARD: At the time of the incident herein, Claimant **was** working
a regular position, Wednesday through Sunday, with rest
days Monday and Tuesday. A temporary vacancy occurred on the Chief Clerk's
position since he was on vacation from December 15, 1980, **through** December
19th. Claimant, at Carrier's request, worked the vacancy and was compensated
for the time at the higher rate but straight time only. The rest days of the
Chief **Clerk's** position were Saturday and Sunday. Petitioner insists that
Claimant should have received the punitive rate for his regular Monday and
Tuesday rest days under the provisions of Rule 7 (g) and 17 (c). Those rules
provide:

"Rule 7 (g) - BULLETINED POSITIONS, as amended:

Positions or vacancies of thirty (30) calendar days or less duration
shall be considered temporary and may be filled without bulletining,
but senior employees should have preference where resulting changes
will not cause undue impairment to the service. Positions or vacancies
known to be for more than thirty (30) calendar days duration will
be bulletined and filled in accordance with these rules. When
temporary positions are discontinued employees affected shall return
to their former positions, if still in existence, otherwise may
exercise seniority rights to other positions."

"Rule 17 (c) - SERVICE ON REST DAYS:

Service rendered by **an** employee on his assigned rest day **or** days,
relieving an employee assigned to such day shall be paid at the
rate of the position occupied **or** his regular rate, whichever is the
higher, with a minimum of eight (8) hours at the rate of time and
one-half."

Carrier disagrees with Petitioner's argument and maintains that the assignment was governed by the provisions of the Memorandum of Agreement dated January 7, 1963, which provides in pertinent part:

"4. Any regular **Employee** voluntarily exercising his seniority onto a temporary vacancy will take the conditions of that assignment including rate of pay (subject to Probationary Rates), rest days; etc. and will remain on the assignment until released therefrom by the actual return of the regular incumbent; the job is abolished; the job is assigned through Bulletin process; he is displaced therefrom, etc.

If the temporary vacancy ends after the last work day of the work week of the position, the Employee must take the rest days of the temporary position before being permitted to return to his regular position or taking another temporary position.'

Carrier notes that there could be no violation of the rules cited by Petitioner since Claimant had voluntarily taken the higher paying temporary assignment under the provisions of the 1963 Memorandum cited above.

The crux of this dispute is whether **or** not Claimant voluntarily took the higher paying position on December 15th. If he was assigned to this position by Carrier, the Organization's position has merit; if not the Carrier must prevail. Carrier insists that Claimant voluntarily took the job, There is no evidence of record to show otherwise. Petitioner had the burden of proof in this case and has not met that burden with respect to this critical factual element of the dispute. For that reason, the Claim must fail.

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:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.