

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10077) that:

1. Carrier violated the rules of the current Clerks' Agreement at Topeka, Kansas, on December 22, 1984, when it failed and/or refused to properly compensate Dolores V. Barton for protecting Position No. 6110, and
2. Dolores V. Barton shall now be compensated (\$37.74) three (3) hours at \$12.58 per hour rate of Position No. 6110 for December 22, 1984, in addition to any other compensation Claimant may have received."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant occupied a position as Key Punch Operator at Topeka, Kansas, with rest days of Saturday and Sunday. On Saturday, December 22, 1984, Claimant worked a short vacancy for eight hours and claimed eight hours at the time and one-half rate as it was the rest day of her regular assignment. On December 19, 1984, Claimant laid off sick at 2:00 P.M., thereby working only 38 hours in her workweek of December 17 through December 21, 1984. For that reason, Claimant was compensated for two hours straight time and six hours at time and one-half.

The Organization claims that Carrier violated the Agreement when it failed to properly compensate Claimant at the time and one-half rate for work performed on her rest day. The Organization maintains that Rule 14 supports its position here. That Rule reads, in relevant part:

"RULE 14 - FILLING SHORT VACANCIES

Definition of Short Vacancies

14-A. Vacancies of 15 work days or less duration shall be considered 'short vacancies' and, if to be filled, shall be filled as hereinafter provided in Rule 14.

Order of Precedence

14-C. When providing short vacancy relief the following order of precedence will be observed:

(1) By calling the senior qualified off-in-force-reduction employe available at straight time rate not then protecting some other vacancy. (Such off-in-force-reduction employe not thereby to have claim to work more than 40 straight time hours in his work week beginning with Monday).

(2) By using the senior qualified regularly assigned employe at the point who has served notice in writing of his desire to protect such service.

NOTE 1. A regularly assigned employe used under the applicable provisions of Rule 14, will:

(a) be paid time and one-half for time worked in excess of 40 hours or on more than five days in the work week of his regular assignment in moving to the short vacancy.

(b) assume the rest days of the assignment on which he is protecting the short vacancy.

(c) not be paid time and one-half for time worked in excess of 40 hours or on more than five days in a work week in returning to his regular assignment.

(d) not be paid for time lost in moving to and from the short vacancy."

In the Organization's view, Rule 14 dictates two provisos for payment of time and one-half. It contends that working on "more than five days in the work week of his (her) regular assignment in moving to the short vacancy" qualifies an employee for time and one-half for such work. While the Organization does not refute Carrier's statement that Claimant worked only 38 hours in the workweek of her regular assignment and therefore did not satisfy the first proviso of Rule 14 Note 1(a) for time and one-half payment of the two hours in question, it argues that she did meet the conditions set forth in the second part of Rule 14 Note 1(a). It further relies on Rule 32-F which states:

"Service rendered by employees on their assigned rest days shall be paid for under Rule 32-I....," that is, time and one-half.

For all of the foregoing reasons, it asks that the Claim be sustained.

Carrier, on the other hand, denies that it violated the Agreement. It agrees with the Organization that Claimant did work the full eight hours of the short vacancy, but does not agree that she is to be compensated the eight hours pay at the time and one-half rate. It argues that Claimant only worked 38 hours in her workweek and was not entitled to the time and one-half rate until she worked 40 hours in her workweek. Carrier further bases its position by reference to Rule 26-A which states:

"Except as otherwise provided in these rules, eight consecutive hours work, exclusive of a meal period, shall constitute a days work."

As such, Carrier asserts that the "basic day rule" was intended to lay the basis for overtime pay for hours worked in excess of eight. Claimant did not work a full eight hours on December 19, 1984, thereby only totalling thirty-eight hours for the total workweek. In the Carrier's view, such does not satisfy the requirements of the forty hour workweek. For the foregoing reasons, Carrier insists that Claimant is not entitled to the additional three hours pay claimed. Accordingly, it asks that the Claim be denied in its entirety.

This Board has carefully reviewed the record of this case, including the Agreement language in question, as well as applicable Awards. We must conclude that given the language in question and past practice on the property, the Organization's position is the more persuasive. Carrier has not supplied any convincing evidence to demonstrate that its interpretation of compensation for overtime worked in this instant dispute is correct in this case. Nor has Carrier shown that it has been consistent in its application that an employee must work 40 hours in a workweek in order to be compensated at the overtime rate. For all of the foregoing reasons, the Claim must be sustained.

Form 1
Page 4

Award No. 28093
Docket No. CL-27024
89-3-86-3-66

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.