

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10356) that:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at San Diego, California, on February 8, 9, 11, 18, 23 and 26, 1989, when it diverted Claimant from his regular assignment of Head Claim Clerk position No. 6214, then failed and/or refused to properly compensate Claimant at the rate of his regular assignment; and

(b) Claimant Dolan shall now be compensated at the rate of his regularly assigned Head Claim Clerk Position No. 6214, which is \$108.10 per day for February 8, 9, 11, 18, 23, and 26, 1988, and as a result of such violation of Agreement rules, in addition to any other compensation he may have received for these dates, including interest payable at the prevailing prime rate covering such loss and continuing as long as Claimant is deprived of this compensation, which amounts to \$40.02, deducted from Claimant's last half March, 1988 pay period."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On February 8, 9, 11, 18, 23, and 26, 1988, Claimant was scheduled to work his regular assignment, Head Claim Clerk Position No. 6214, which has a daily pay rate of \$108.10. On these dates, however, Carrier instructed Claimant to work in the Chief Clerk Position No. 5006, which has a daily pay rate of \$114.94. Claimant was paid for this work in a paycheck issued in the first half of March 1988. Contending that the Claimant had been overpaid because

the wrong pay code had been used, the Carrier deducted \$40.02 from Claimant's pay in the paycheck issued in the last half of March 1988.

The Organization then filed a Claim on the Claimant's behalf, contending that the Carrier violated the current Agreement by failing to properly compensate the Claimant. The Carrier denied the Claim.

This Board has reviewed the evidence and testimony in this case, and we find that the language of the Agreement requires that the Claim be sustained.

The Carrier basis its denial on its interpretation that the extra payment received by the Claimant for working the Chief Clerk position on the dates in question was an "arbitrary" representing duplicate time payments and, therefore, not subject to the increases contained in the National Agreement. However, that is simply an improper interpretation.

The amount in dispute represents a portion of the Claimant's regular rate of pay for his regular position which he received pursuant to Rules 31(a) and 32(n) as a result of the Carrier's assigning him to the Chief Clerk position. The amount in dispute is not a special allowance or payment to the employee for inconvenience, delay, attending court, deadheading, travel time, etc. Hence, pursuant to Rules 31(a) and 32(n), the Claimant was entitled to a full day's pay for the job he actually worked. The Carrier had no right to classify his rate of pay as an "arbitrary" and thereby subtract the recent pay increase from his regular pro rata pay.

This issue was discussed in another Award by Special Board of Adjustment No. 1011. In Award 5, that Board held that the type of payment is not an arbitrary.

We also want to distinguish this case from Case 1 of Public Law Board No. 2093, cited by the Carrier. That case involved a meal allowance which is more of an "arbitrary" or a "special allowance not included on fixed . . . rates of pay"

Since we find that the amount at issue is not an arbitrary, but is based on Claimant's regular rate of pay, we find that the Claim must be sustained. The eight pro rata hours of pay is to be paid and calculated at the rate of the regular assignment as if the Claimant had worked it. The request for interest is denied.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 29359
Docket No. CL-28787
92-3-89-3-197

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.