

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29884
Docket No. CL-30705
93-3-92-3-534

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union)
(Southern Pacific Transportation Company)
((Western Lines))

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10839) that:

- (a) The Southern Pacific Transportation Company violated the Agreement on or about September 5, 1989, when failed and/or refused to use Ms. Kelly D. Williams to perform additional service at the time and one-half rate for Position 700, Sr. Traffic Service Clerk (\$113.77 per day), and;
- (b) The Southern Pacific Transportation Company shall now be required to compensate Ms. Kelly D. Williams for two (2) hours at the time and one-half rate of Position 700, Sr. Traffic Service Clerk, for dates of September 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, October 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, November 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 27, 28, 29 and 30, 1989."

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 employe 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.

At the time of this claim, the Claimant was the incumbent on position 700, Senior Traffic Service Clerk, with hours from 6:00 A.M. to 3:00 P.M., Monday through Friday. This claim arose when the Claimant alleged that Clerk R. B. Welch performed overtime work despite the fact she was senior to Welch. The Carrier maintains it never called, directed, or allowed Welch to work overtime on any of the dates claimed. Rather, the Carrier contends that because of a "car pool" Welch spent many afternoons as an accommodation to himself in the office studying manuals, com-puter printouts, reports, and applications. The Carrier describes Welch's actions as voluntary.

Notwithstanding the above, the Carrier contends the Claim should be dismissed because it is vague and indefinite. The record does not support this allegation. Despite claiming it could not make a proper investigation without documentation of the alleged work and times performed, Carrier's written denials indicate it fully understood the nature of the Claim. For example, the Carrier was well aware that Welch worked Position 700 from 6:00 A.M. to 3:00 P.M., Monday through Friday, and that the allegation was that Welch performed compensable overtime from 3:00 P.M. to 5:00 P.M. from October 10 through and including December 8, 1989. Moreover, in a revised statement dated March 10, 1992, the Organization specifically pinpointed the work Welch was alleged to have performed; namely, that he was in telephone communication with customers.

This case involves charges and denials which bring into focus the burden of proof that must be borne in such disputes. The Organization stresses the importance of a statement submitted by the Claimant's immediate supervisor, K. M. Holcomb, Manager, IMS Service. That statement acknowledges this Claim. It establishes Holcomb was a manager in Customer Service for the period of time represented by this claim. Holcomb specifically acknowledges that, apparently, prior to the filing of the claim, she received complaints about Welch working beyond his normal hours. In so doing, Holcomb stated in pertinent part:

"It was brought to my attention by both clerical complaints and by the floor time-keeper that Mr. Welch was working hours past his appointed hours. I approached Mr. Welch and advised him that as a union clerk, he was not to keep working this overtime nightly. Mr. Welch responded that he was expected to continue working until Mr. L. G. Park, Director of Customer Service, was ready to

leave for the evening. Mr. Park was the driver in a car pool to Marin, in which Mr. Welch was a passenger. I explained to Mr. Welch that to continue working once informed was against the union contract. Again Mr. Welch indicated that he was obligated to work if there was to be a future for promotion etc according to Mr. Park. I related the complaints and my conversations with Mr. Welch to Mr. Park, who at that time was my immediate superior. Mr. Park told me that he appreciated Mr. Welch's efforts and he personally would take care of the complaints. At his request and insistence, I withdrew from the issue and Mr. Welch continued to work after his appointed hours for a long period of time."

The accuracy of the above statement was not directly challenged by the Carrier during the Claim handling of this dispute. In its Submission, Carrier refers to statements from other employees submitted by the Organization, stating:

"However, the mere fact that Mr. Welch was in the office does nothing to prove...he performed work for which any other clerk should have been compensated."

This statement ignores the fact that Holcomb, Welch's immediate supervisor, without rebuttal, stated she explained to Welch that to continue "working" was against the union contract. Significantly, Holcomb states she so informed L. G. Park, Jr., Director of Customer Service.

It is evident from Holcomb's statement that Parks was advised of the problem, as well as Holcomb's advice to Welch, well before this Claim was filed. Nonetheless, the record contains no challenge by Parks with respect to the accuracy of this asserted communication. Therefore, the Board is obliged to find the Carrier was put on notice that Welch was allegedly performing unit work before this Claim was filed.

On March 27, 1992, the Carrier provided the Organization with a statement written by Welch which is dated February 13, 1990. Keeping in mind that the Carrier has consistently taken the position that Welch was not performing unit work, Welch's statement contradicts that assertion and, in doing so, attempts to shift any blame to Holcomb, who he charges "frequently asked me to research problem cars for her in the afternoons, and she never advised me that as a union clerk I was not to keep working overtime." (emphasis added) Notwithstanding this charge and admission that he

worked overtime, Welch concludes his statement by stating, "The afternoons I stayed over were for purposes of self-training."

The probative evidence of record causes this Board to view Holcomb's statement as un rebutted and requires a finding that the Organization has met its initial burden of proof. Customer Service Director Parks did not deny any aspect of Holcomb's account. Moreover, the statements of employees Woodbury and Yee establish that Welch remained at work after 3:00 P.M. When these statements are viewed in context with Holcomb's statement, as well as the Claimant's allegations, Welch's attempt to shift blame to Holcomb, while at the same time contradicting his claim that he stayed for self-training, is simply not credible. Carrier argues the remedy requested is excessive and that the Claimant has provided no proof that Welch worked even one hour past his assignment, no less two. Once again, this argument ignores Holcomb's statement which clearly implies Welch was present on a daily basis because he had to wait for Parks in order to get a ride. With respect to the amount of time, employee Woodbury's statement that Welch worked at least one hour a day overtime undercuts the claim that two hours of work were performed. In summation, we find the Organization has established an un rebutted prima facie case that employee Welch worked at least one hour of unit work on a daily basis from October 10 through December 8, 1989. Moreover, the record shows Carrier representatives were aware of this condition and did nothing to stop Welch from working overtime.

The Claim is sustained, and the Carrier is required to compensate the Claimant for one hour at the time and one-half (1 1/2) rate of Position 700 for the dates claimed from October 10 through and including December 8, 1991.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.