

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30135
Docket No. CL-30116
94-3-91-3-560

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications Union
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(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10629) that:

1. Carrier violated the TCU Agreement and in particular, Rules 40, 58, Appendix "A", Appendix "B" and Appendix "O", and any associated rules when on the date of Friday, April 13, 1990, a legal holiday, the position of Customer Service Representative, Ms. S.H. Cogburn, National Customer Service Center, St. Louis, Missouri was worked while Ms. Cogburn was observing annual vacation and Carrier refused to compensate her for eight (8) hours at the punitive rate, received by the employee who worked the holiday. (Carrier's File 900849GU).
2. Carrier shall now be required to compensate Ms. S.H. Cogburn for eight (8) hours at the time and one half (punitive) rate of her regularly assigned position of Customer Service Representative, St. Louis, Missouri, hours 11:00 PM to 7:00 AM, Central Region, Kansas Team rated \$111.00 per day, Monday through Friday, rest days Saturday and Sunday, Mob No. 322."

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 employee 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 was a Customer Service Representative assigned to the Kansas City Team of the Central Region at Carrier's National Customer Service Center ("NCSC") in St. Louis. Her hours were from 11:00 PM to 7:00 AM with Saturday-Sunday as her rest days. She was the most senior member of the Kansas City Team.

The Claim alleges that numerous junior employees worked the Good Friday holiday at the punitive rate while Claimant was observing regularly scheduled vacation. She received 8 hours pay each, at the pro rata rate, for the vacation day and for the holiday. She seeks an additional 8 hours of pay at the punitive rate contending that another employee worked her position. The Organization relies on a line of Third Division Awards as well as the 1970 exchange of interpretive letters, known as the Lowrey-Oram letters, as justification for the Claim.

The Carrier concedes that the Claim should be resolved in Claimant's favor if her position had indeed been worked by another employee on the holiday while she observed vacation. However, Carrier denies that this was the case. Rather, Carrier maintains that the facts in this dispute are distinctly different from the situations involved in the prior Awards cited by the Organization as well as the Lowrey-Oram letters.

Carrier asserted, on the property, that Claimant is a member of a pool of Customer Service Representatives at the NCSC who have identical titles and duties and, as a result, do not own specific positions. Carrier argues, in essence, that none of the Customer Service Representative positions has discrete duties. Quite to the contrary, Carrier says the duties are completely interchangeable; any member of the pool can perform any of the duties. As a result, Carrier maintains that no other employee worked Claimant's position on the holiday. Instead, each employee working that day was working his or her own position. Carrier cited prior Third Division Awards that, it says, applied such interpretations to the work performed on holidays by pool employees.

The Organization did not challenge Carrier's assertion on the property although it did allege Claimant possessed discrete work duties in its Submission to this Board. The Carrier objected to the new material in the Organization's Submission. It is well settled that we will not consider evidence or argument that is raised for the first time before this Board.

Our review of the prior Awards cited by the Organization reveal nearly identical fact situations where an employee occupied a position that had discrete duties associated with it. Each Claimant was on vacation during a holiday and each claimant's position was worked by a vacation relief or similar relief

employee. The latter Awards in the line of cases cite the Lowrey-Oram letters as being applicable to that type of situation. See Third Division Awards 19675, 20608, 22970, 22183, 24109 and 27097.

Carrier cited Third Division Awards 27206 and 27568 in support of its contention that pool work is not the exclusive entitlement of any member of the pool. Our review of these awards agrees that they recognize a difference between pool work versus the work of a discrete position in connection with holiday work assignments.

In disputes of this nature, the Organization has the burden of proof to establish the validity of the Claim. On the record before us, and with particular reference to the unchallenged assertions of the Carrier regarding pool work and the fact that Claimant did not have discrete duties, we find that the Organization has not satisfied its burden of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 4th day of April 1994.