

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30662
Docket No. CL-30838
95-3-92-3-686

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

PARTIES TO DISPUTE: (Transportation-Communications International
(Union
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(Chicago, Central and Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10861) that:

1. Carrier violated the Clerks' Agreement on Saturday, November 16, 1991, when it failed to properly compensate an employe for service rendered on his assigned rest day.
2. Carrier shall now compensate Clerk A. C. Gloechner, East Cabin, Illinois, the difference between the pro rata rate that he was paid, and the punitive rate he should have been paid for service rendered on the claim date, a difference of \$62.72."

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.

This dispute involves a second claim submitted on behalf of Claimant. The events which gave rise to this claim occurred on a Saturday, one of Claimant's normally assigned rest days. The initial claim, submitted on November 26, 1992, is addressed by this Board in Third Division Award 30664.

On Saturday, November 16, 1991, Claimant was called to work a one day vacancy on the Transportation Assistant (T/A) position at Dubuque, Iowa. Although Claimant actually worked eleven hours and forty-five minutes, he was compensated for only eight hours at the rate of \$125.44.

On December 9, 1991, the Organization submitted a claim maintaining that:

"This claim is filed because Claimant was called to work the T/A position on Saturday, November 16, 1991, which was Mr. Gloechner's rest day and was paid only straight time for working. Claimant did not know he was paid only straight time until he received his paycheck and discovered his shortage. Claimant is due time and one-half for working on his rest day and under Rule 22(c) among others of the TCU Schedule of Wages and Rules. Transportation Assistant positions are not exempt from Rule 22."

The Superintendent replied on behalf of the Carrier stating:

"I am agreeable to allowing this claim for \$62.72 if Claim File No. 100 claiming \$88.20 overtime on behalf of A. C. Gloechner for the same date is withdrawn. If you are agreeable to this, please return a signed copy of this letter and I will place this claim in line for payment. If you do not agree to withdraw File No. 100, then the appeal of this Claim File No. 104 is declined in its entirety."

The Organization replied on behalf of Claimant rejecting Carrier's offer. Carrier continued to maintain its position asserting that there are "no provisions in the Agreement providing for payment of time and one-half for working a Transportation Assistant's position."

The issue presented here for resolution is identical to those issues before the Board in the aforementioned Third Division Award 30664. Carrier contends that Claimant is not entitled to any overtime due to the "A" designation associated with the (T/A) position, which exempts Claimant from "any provision of the Agreement which would provide payment of time and one-half for working the T/A position." The Organization, relying upon Rule 22(c) of the Agreement, maintains that Claimant is entitled to the overtime pay. Although the Transportation Assistant position is exempt from several Agreement Rules, Rule 22(c) is applicable in this instance. For details set forth more fully with respect to this issue, please see Award 30664. Based on the foregoing, this claim is sustained.

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AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.