

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30878
Docket No. CL-30590
95-3-92-3-447

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
(
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10823) that:

Claim No. 1

The Southern Pacific Transportation Co. violated the current Clerks' Agreement when on September 24, 25, October 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, November 5, 6, 12, 13, 19, 20, 1988 it failed to call and use Mr. C. M. LaCourse, Clerk, West Colton, California on Position 189, Train Clerk (\$107.03) for eight hours overtime and instead used on-duty personnel to fill Position 189, Train Clerk.

Claim No. 2

The Southern Pacific Transportation Co. violated the current Clerks' Agreement when on January 21, 22, 28, 29, February 4, 5, 11, 12, 18, 19, 25, 26, March 4, 5, 11, 12, 1989 it failed to call and use Mr. C. M. LaCourse, Clerk, West Colton, California on Position 189, Train Clerk (\$107.03) for eight hours overtime and instead used on-duty personnel to fill Position 189, Train Clerk.

Claim No. 3

The Southern Pacific Transportation Co. violated the current Clerks' Agreement when on March 18, 19, 25, 26, April 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, May 6, 7, 1989 it failed to call and use Mr. C. M. LaCourse, Clerk, West Colton, California on Position 189, Train Clerk (\$107.03) for eight hours overtime and instead used on-duty personnel to fill Position 189, Train Clerk.

Claim No. 4

The Southern Pacific Transportation Co. violated the current Clerks' Agreement when on March 18, 19, 25, 26, April 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, May 6, 7, 1989 it failed to call and use Mr. C. M. LaCourse, Clerk, West Colton, California on Position 189, Train Clerk (\$107.03) for eight hours overtime and instead used on-duty personnel to fill Position 189, Train Clerk.

Remedy

The Southern Pacific Transportation Co. shall now be required to compensate Mr. C. M. LaCourse an additional days' pay (8 hours) at the overtime rate of Position 189, Train Clerk (\$107.03) for each date designated in the claim."

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.

Claimants was the regularly assigned incumbent of Position 189, Train Clerk, with hours of 3:00 PM to 11:00 PM, Monday through Friday. For some time, the work of Position 189 was performed on Saturday and Sunday by a relief to Position 189. In September 1988, Carrier determined to eliminate the position on weekends and the duties were reassigned to other clerical employees already working weekends.

The Organization argues that Carrier violated the Agreement by not calling Claimant to perform the work. Its primary argument involved Rule 20(e) and Rule 34(f) which state:

"RULE 20 OVERTIME

(e) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available Guaranteed Extra Board employee (extra unassigned employee in San

Francisco General Offices) who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

* * *

RULE 34 SHORT VACANCIES

(f) When a vacancy exists on an assigned work day of an established position or a new position, it will be filled as follows, when the Carrier elects to fill the vacancy:

1. Senior, qualified, available Guaranteed Extra Board employee on a straight-time basis in accordance with the provisions of this Rule 34.
2. In the absence of a qualified Guaranteed Extra Board employee on straight-time basis, by the senior, qualified, available assigned or Guaranteed Extra Board employee on an overtime basis, or where applicable under the provisions of Section (c) of this rule. In the case of a vacancy on a relief assignment, by the incumbent of the position to be relieved on that date, then by the senior, qualified, available, assigned or Guaranteed Extra Board employee. Calling will be from the volunteer overtime list, where maintained."

We note that there are several key factual conflicts regarding the work performed on weekends that we are unable to reconcile in the record presented.

We also note that it is the Organization, the moving party, which has the burden of proof. Based upon the record presented, we must conclude that the Organization has not met its burden here. Stated simply, the record evidence does not establish a violation of Rule 20 or Rule 34.

AWARD

Claim denied.

Form 1
Page 4

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.