

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38118
Docket No. CL-38928
07-3-05-3-412**

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13088) that:

- 1. Carrier violated the Agreement on various dates, as noted in each claim, when it failed to call the senior employee in a pool for overtime service (SCL Seniority District 9 – COPS).**
- 2. Carrier shall now compensate the named Claimant two hours’ pay at the overtime rate of \$183.70 (daily rate) for each violation.”**

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 were given due notice of hearing thereon.

A. Background

The issue before the Board is whether the Carrier violated the Clerk's Agreement on dates between October 7 and December 10, 2003, when it chose to utilize the services of less senior "P" Clerical class employees to perform overtime services in lieu of more senior rank and file Clerical employees. There are a total of 244 claims before the Board relative to this issue asserting that the overtime work should have been given to the more senior rank-and-file employees who were both qualified and available to perform this work. The record reflects that each such "P" employee worked approximately two hours, and was paid two-hours and 40 minutes at the overtime rate. The fact that the Carrier utilized the services of less senior "P" class employees in lieu of the more senior rank and file employees prompted the Organization to file the instant claims.

B. The Distinction Between "P" Class and Rank-and-File Employees

On April 16, 1997, CSX Transportation, Inc. (former Seaboard Coast Line Railroad Company) and the Transportation Communications International Union entered into an Agreement whereby two former SCL Accounting Departments were merged into a single coordinated department at Jacksonville, Florida. The resulting department was named the Customer Order Process Operation, known by its acronym "COPS." Positions established under the COPS Agreement were categorized into a "Pool Concept" consisting of four pools. Two of the pools relevant to the case before the Board were identified as Supervisor Customer Service – Revenue (P) (known herein as "P" class employees) and Customer Service Representative – Revenue (known herein as "rank-and-file" employees).

The incumbents of both pools are TCU-represented employees.

The job description for the rank-and-file Customer Service Representative – Revenue employees contains, among others, the following relevant duties and key competencies:

“. . . Performs all duties associated with freight and billing, collection of charges due CSXT and maintenance of all associated files. Works and clears suspense in waybilling, settlement, rating and collection process. . . . Communicates internally and externally to perform associated and administrative duties as required.

Key Competencies:

Must have successfully completed a certified rate course. Must have comprehensive PC and mainframe skills. Typing skills required."

The job description for the "P" class employees contains, among others, the following relevant duties and key competencies:

"Assist manager and supervises daily duties of assignment. Performs pricing work, including: research and analyze requests for prices, both customer specific and non-customer specific. Works and clears suspense in waybilling, settlement, rating and collection process. . . .

Key Competencies:

Must have successfully completed a certified rate course. Must have comprehensive PC and mainframe skills. Typing skills required."

Side Letter No. 5, executed on September 17, 1997, also provides the following relevant distinguishing characteristics between the rank-and-file and "P" class employees as regards overtime assignments and opportunities:

"Question: If miscellaneous overtime is needed in COPS, what would be the distinction between that which occurs in the 'P' Pool and that of the regular COPS Pool?

Answer: Miscellaneous overtime is filled by the senior employee in the respective pool who has indicated his desire to perform overtime service. Employees occupying 'P' positions may only be utilized to perform training or to relieve another 'P' position. It is not the intent of the parties to have miscellaneous overtime performed by occupants of 'P' positions, as their function is supervisory in nature."

C. Position of the Parties

The Organization's Position: It is the Organization's position that: (1) The relevant language of Side Letter No. 5 makes it clear that the distinguishing factor between the rank-and-file and "P" class employees is the latter's responsibility for supervision. Accordingly, because the Carrier has been unable to establish that the "P" class employees were granted overtime assignments over qualified and more senior rank-and-file employees, the Board should rule in favor of the Organization. (2) The duties and responsibilities performed by "P" class employees on the dates at issue constituted no more than miscellaneous service associated with the clearing of old and outstanding revenues out of the suspense bucket, clearly duties within the ~~job description of the rank-and-file employees, and duties performed by this class of employees on a regular basis.~~ (3) The Carrier's January 2004 response admitted that the work at issue that was performed by "P" class employees was "... the same type of work performed by [rank-and-file employees] during normal working hours." While acknowledging the Carrier's assertion that this statement was made in error, the Organization labeled it as "Monday morning quarter-backing." This, the Organization asserts, represents a clear admission by the Carrier that the work at issue should have been performed by the more senior rank-and-file employees. (4) ~~More important, the Organization asserts that a review of the statements provided by the P-class employees who performed the overtime work is consistent with the Carrier's January 2004 response that the work at issue was nothing more than work regularly performed by rank-and-file employees.~~

The Carrier's Position: It is the Carrier's position that: (1) The Organization's reliance on Side Letter No. 5 is misplaced in that the Organization, which bears the burden of proof in this case, failed to demonstrate that the work performed by the "P" class employees was "miscellaneous" in nature. (2) The work performed by the "P" class employees was supervisory in nature. (3) Rank-and-file employees were given the first opportunity to resolve issues related to the waybills, and when they were unable to do so, the issues progressed to the "P" class employees who had greater authority to make decisions and bring the matters to a satisfactory conclusion. In this regard, the Carrier notes that the resolution of these issues required analytical and problem-solving skills more akin to skills expected of "P" class employees. (4) The work performed by the "P" class employees required a managerial decision-making process on how to handle these stale disputes, a process associated with the "P" class pool of employees.

DISCUSSION

As an initial note, it is well settled by controlling authority that the Board has no power to impose principles of equity or justice. Our responsibility and obligation is to interpret and apply the provisions of the Agreement between the parties as written. Nor are we clothed with any authority to rewrite the Agreement in favor of either side to the dispute, for to do so would deprive them of the bargain struck. With this principle firmly in place, we now review the relevant facts and authority set forth in the record of this case.

There are four relevant factors that must be reviewed in this matter. Those factors are as follows:

1. The job descriptions for each pool of employees at issue,
2. Side Letter No. 5
3. The responses from the parties relative to this dispute where such responses provide a clear position of each party, and
4. The letters/notes submitted by each "P" class employee at the behest of the Carrier that describe the work each such employee performed, on an overtime basis, on the dates at issue.

As an initial note, it is significant that the job descriptions associated with the rank-and-file and "P" class employees provide identical key competencies and the identical responsibility of "works and clears suspense in waybilling, settlement, rating, and collection process." The distinguishing features that separate these classes of employees lie in the stated expectation that the duties of the "P" class employees are primarily "supervisory in nature" (Side Letter No. 5) and/or that the work performed by the "P" class employees requires, at times, "strong conceptual, analytical, quantitative problem solving and interpersonal skills." With these points firmly established, in order for the Carrier to successfully defend against the claims, the record must establish that the overtime work associated with the clearing of suspense in waybilling, settlement, rating and the collection process was primarily supervisory in nature, or required "strong conceptual, analytical, quantitative problem solving and interpersonal skills."

In reviewing the statements submitted by the "P" class employees, where such statements were offered by the Carrier in its response to the Organization's claim, the Board notes that in general, the employees were describing work normally and traditionally performed by rank-and-file employees. In this regard, a sampling of these statements noted:

"During this current round of Overtime I have worked with Marketing to clear complex and old Suspense items including clearing any ISS Prompts that arise. (Emphasis added – what did this employee do for the other rounds of Overtime?)

I have been working on the old unapplied Commercial Traffic Money in an attempt to apply to old bills in the Accounts Receivable. Many of these bills have been in excess of two years old.

During the overtime I have worked on the old suspense that has fallen in the default bucket.

I am working on old suspense, old accounts receivable items, or any problems the associates have during my overtime hours.

During overtime I have been working old suspense items and old accounts receivables items.

I have focused on Accounts Receivable issues, (bills over 90 days) during overtime hours for March 2005. Prior to March 2005, my overtime efforts were geared toward clearing old suspense bills.

On overtime, during a suspense blitz, I clear suspense items over 90 days old. During a collection blitz, I resolve and collect billing for problem accounts that are older than 90 days old as 2001."

In reviewing each of the statements submitted by the "P" class employees, it is evident that the suspense items they were dealing with resulted from a number of things, among which include misapplied money, no rate, short pays, cars not received, no payment made and so forth. The record establishes, particularly in light of the sampling of statements noted above, that the work performed by the "P" class employees on an overtime basis is substantially similar to that which has been

assigned to incumbents in both pools. The record does not reflect that the "P" class employees were performing work of a diagnostic and/or supervisory nature. Accordingly, the Board concludes that this overtime work could have been properly assigned to rank-and-file employees. It is significant that when the instant claims were initially denied by the Carrier such work was described as the same type of work that was performed by rank-and-file employees during normal working hours. While note is taken of the fact that the Carrier subsequently dismissed this response as an error, it is worth noting that the statements submitted by the "P" class employees who performed the overtime work bear out the Carrier's initial response.

CONCLUSION

Given the foregoing discussion, the Board finds, in the context of the entire record, including those cases cited by the Carrier in its case-in-chief, that the overtime work performed by the "P" class employees between October and December 2003 was of the type that could have been performed by rank-and-file employees whose seniority was greater than the "P" class employees assigned. Accordingly, Rule 18 was violated, and the instant claim is sustained.

With respect to the remedy, the Board notes that the record contains the overtime rosters for both "P" class employees as well as rank-and-file employees. These records establish that each Claimant had previously indicated his/her desire to protect overtime service, whereas a review of the "P" class overtime list indicates that most "P" class employees indicated their desire not to be called for overtime purposes. Accordingly, because there is nothing in the record to the contrary, the rank-and-file Claimants are presumed to have been available for the overtime opportunities challenged in this matter.

AWARD

Claim sustained.

Form 1
Page 8

Award No. 38118
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ORDER

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 15th day of March 2007.