

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39354  
Docket No. CL-39437  
08-3-NRAB-00003-060138  
(06-3-138)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood (GL-13121)  
that:**

- (1) Carrier violated Rules 6, 8, 11, 12, 56, and the current Doubling and Guaranteed Seniority Extra Board Agreements of the current UP-TCU Clerical Agreement when it neglected and/or failed to call incumbent Claimant K. W. Killeen to fill the vacancy which existed on November 25, 2004 at 11:00 p.m. on Position Utility Clerk in the North Yard in Salt Lake City, Utah. Clerk Don Dolan was called on an overtime basis to fill this vacancy.**
- (2) Carrier shall now be required to compensate Claimant Killeen eight (8) hours additional compensation at the overtime rate of Utility Clerk, or EMR or Protective Rate whichever is higher on the above date in addition to any other compensation earned by her.”**

**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.

The basic facts of the instant case do not appear to be in dispute. The Claimant is regularly assigned to a Utility Clerk position at the Roper Yard in Salt Lake City, Utah, with assigned work days of Friday through Tuesday, and rest days of Wednesday and Thursday. On Thursday, November 25, 2004, a rest day for the Claimant and also a holiday (Thanksgiving) the Carrier determined that there was a need for work to be performed on the Claimant's position. The Carrier called another clerical employee instead of the Claimant. Pursuant to this action, the instant claim was filed. It should be noted that it is uncontested that the Claimant was not, but should have been, properly called. The only issue in this matter is the remedy.

The Organization contends that the Carrier violated the Agreement when it did not select the Claimant for the vacancy. It is clear that pursuant to the Doubling Agreement, the Claimant was entitled to the position. In addition, it is clear that the Claimant is entitled to be compensated at the time and one-half rate for the holiday. As a remedy, the Organization requests that the Claimant be compensated eight hours at the overtime rate for Utility Clerk, EMR or Protective Rate whichever is higher on the above date.

Although, the Carrier admits that it acted improperly by not selecting the Claimant for the overtime, it contends that she is entitled to no more than eight hours at her EMR or protected rate, whichever was higher on November 25. This is pursuant to a longstanding past practice in which such claims have been settled on the basis of eight hours at the straight time rate. Therefore, the Carrier asserts that the Claimant is only entitled to eight hours at the straight time rate rather than eight hours overtime.

Third Division Award 7134 dealt with a similar issue. In determining employee compensation entitlement for a holiday, the Board held, in relevant part, as follows:

**“The Carrier asserts that the pro rata rate only constitutes the measure of claimants’ loss. We point out that the rate of pay for work performed on specified holidays is time and one-half. . . . The contract value of holiday work lost is time and one-half. In effect, the regular rate for holiday work is time and one-half. It does not involve the claim for an unearned penalty as in the case of a claim for time and one-half for overtime lost. We conclude that the claim should be sustained at the time and one-half rate.”**

**In the instant case, after a review of the evidence and the positions of the parties, the Board finds that the Organization has been able to meet its burden of proof. The Organization has shown that the Claimant was denied the opportunity to work on a holiday. Had she worked, her regular rate for that holiday was time and one-half. Therefore, in order to make her whole, she should be compensated at the rate of time and one-half for the Thanksgiving holiday. The claim is sustained.**

**AWARD**

**Claim sustained.**

**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 21st day of October 2008.**