

Award No. 13940
Docket No. CL-14883

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5570) that:

The Carrier violated the Agreement between the parties when it failed to call extra board Mail Handler Edward Canada for work on the 12:01 A. M. to 8:30 A. M. shift, Saturday, October 12, 1963; and,

(b) The Carrier pay Edward Canada at the applicable rate of Mail Handler for 8 hours for its violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case are not in dispute, and are comparatively simple. The claimant employee, Edward Canada, is a Mail Handler on the extra board of Mail Handlers as established by a Memorandum Agreement between the parties signed April 25, 1957, and amended October 1, 1959, copy of which is attached as Employees' Exhibit 1. The Memorandum Agreement is also identifiable as Appendix H of the printed Agreement between the parties of October 1, 1942, as revised effective June 1, 1961, copies of which have been furnished the Board.

On Friday, October 11, 1963, claimant Canada was called in regular order and worked 3:30 P. M. to 12:00 Midnight. He was not called or notified to report for an assignment to the shift with a starting time of 12:01 A. M., Saturday, October 12, 1963, but another extra board employee, namely, David Harris, junior to Canada, was called and worked that date and shift. The failure to call Canada is the cause of this dispute.

Claimant Canada was called and did perform work Wednesday, Thursday and Friday, October 9, 10 and 11, 1963, prior to the date of the claim. He was not called to work any shift Saturday, October 12, 1963, the date of the claim, but was called and did work Sunday, October 13, 1963, on the 12:01 A. M. to 8:30 A. M. shift. He worked only four days in his work week.

Claim was filed for and in behalf of Claimant Canada November 1, 1963, and thereafter appealed timely to the highest official of the Carrier des-

Under the above rule it is clear that extra employes on the extra board are to be called for short vacancies; that they will be given 1½ hour calls, and, for failure to respond are marked off for twenty-four hours.

Claimant Canada was obviously not on the extra board while covering the 3:30 P. M. to Midnight assignment. Not being on the extra board, he was not available for call.

The claim is without merit, and should be denied.

OPINION OF BOARD: Claimant is a Mail Handler on the extra board of Mail Handlers as established by a Memorandum Agreement between the parties.

On Friday, October 11, 1963, Claimant was called in regular order and worked 3:30 P. M. to 12:00 Midnight. He was not called or notified to report for an assignment to the shift with a starting time of 12:01 A. M., Saturday, October 12, 1963—an employe, junior to Claimant, was called and worked that date and shift. The failure to call Claimant gave rise to the dispute.

The pertinent provisions of the Memorandum Agreement are:

“(c) The work week of extra board employes shall be a period of seven consecutive days starting with Monday.

(e) Extra employes and regular employes to be used on the latter's rest days will be called in seniority order one and one-half (1½) hours in advance of the starting time of the assignment for which he is to be used.

(f) Extra employes will be called for short vacancies on any shift, but will not be used for more than one shift having a starting time in a calendar day. The present shift, Midnight to 8:30 A. M., shall be considered as having a starting time of 12:01 A. M. for the purpose of this paragraph.

NOTE: Extra employes when assigned to the 7:00 P. M. to 3:30 A. M. shift will not be called or required to report for a call on the 5:00 A. M., 6:00 A. M., or 7:00 A. M. shifts the following morning, but will be in line for calls on the P. M. shifts of the calendar day following their assignment to the 7:00 P. M. shift.”

The provisions are not ambiguous.

The Carrier's defenses are: (1) Claimant was not available; and, (2) it was not the practice to work an employe 16 continuous hours.

Practice does not reform the clear mandates of the Memorandum Agreement.

While it is unusual to find an agreement permitting an employe to work 16 continuous hours without penalty payment for overtime, this particular Agreement does so when the shifts worked are in two calendar days. Therefore, the “applicable rate” prayed for in paragraph (b) of the Claim is pro rata rate.

We will sustain the Claim and award monetary damages for 8 hours at the pro rata rate.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained with monetary damages as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.