Award No. 15834
Docket No. CL-14752

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5497) that:

1. Carrier violated the Clerks' Rules Agreement at St. Paul, Minnesota when it called furloughed employes to perform transloader work at the freight house and then removed them from that assignment to perform mail sorter work at the Union Depot.

2. Carrier shall now be required to compensate Employe R. Malone for three (3) hours at the overtime rate of Mail Sorter for November 9, 1962.

EMPLOYES' STATEMENT OF FACTS: At the time of the occurrence on which this claim is based, Employe R. Malone, who has a clerical seniority date of January 16, 1946 and a non-clerical seniority date of January 23, 1929 in Seniority District No. 29, was the occupant of a regularly established Mail Sorter position at the Union Depot, St. Paul, Minnesota.

Employes E. Senske and F. Morrow are furloughed employes in Seniority District No. 29 at St. Paul, Minnesota.

On November 9, 1962, Employes Senske and Morrow were called to perform transloader work at the St. Paul Freight House where they remained until 12:30 P. M. They were then removed from the assignments for which called and sent to the Union Depot, which is in close proximity to the Freight House, to perform mail sorter work and performed mail sorter work from 12:30 P. M. to 4:30 P. M.

Timeslip was filed with Agent P. F. Mueller by Employe Malone and was declined by Mr. Mueller in a letter dated November 13, 1963 reading:

"Your claim of November 9th for overtime from 1:30 P. M. to 4:30 P. M. is hereby declined."

would be no other transloading work between 12:00 Noon and the ending time of their tour of duty, i.e., 4:30 P. M., furloughed employes Senske and Morrow were, after a half-hour lunch period (12:00 Noon to 12:30 P. M.), utilized from 12:30 P. M. to 4:30 P. M., in the handling of mail at the depot for which they were compensated for four (4) hours at the Mail Sorter's rate of $2.4228 per hour.

The utilization of furloughed employes Senske and Morrow on November 9, 1962 in the handling of mail was not done because there was an excess of mail handling to be performed, but instead they were so utilized merely because they had completed the transloading work in advance of their 8 hour tour of duty and there was no other work from them to do. In other words, furloughed employes Senske and Morrow were not utilized to handle mail on November 9 to avoid paying overtime to the regular mail handling force. There was no overtime required, there was no overtime worked nor would there have been any overtime worked by the regular mail handling force, including claimant Malone, on November 9, 1962 even if furloughed employes Senske and Morrow had not been used to handle mail to fill out their assignments on those days when there was no other work for them to perform.

Claimant Malone filled his regular assignment on November 9, 1962 from 5:00 A. M. to 1:30 P. M. for which he was compensated accordingly.

There is attached hereto as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of July 31, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier called in two furloughed employes on November 9, 1962 to perform transloader work at the St. Paul Freight House. Said furloughed employes performed such transloader work from 8:00 A. M. until 12:30 P. M., when Carrier assigned them to mail sorter work at the Union Depot during the balance of the day. Claimant, a regularly assigned mail sorter at Union Depot, filed the instant claim for compensation at the overtime rate because he was not offered an opportunity to perform such mail sorter work assigned to furloughed employes during his off duty hours. Petitioner contends that Carrier violated the Memorandum of Agreement of September 14, 1956 by assigning the handling of mail to employes assigned to transloader work at St. Paul, Minnesota.

Initially, Carrier requests that the Board dismiss the claim because the claim was not appealed within the prescribed time limit contained in Section 1(b) of Article V of the Agreement of August 21, 1954. The record reveals that an appeal was filed within the specified time limit, which erroneously sought compensation for four (4) hours at the overtime rate instead of three (3) hours. Said appeal was declined by Carrier, in part because it was not the same initially presented on the property. Thereafter, a corrected claim was filed on March 4, 1963, which also was declined by Carrier. Although Carrier is technically correct in contending that a proper appeal was not timely, a defective pleading was actually filed within the prescribed time period. The nature of the error was obvious and clearly not an attempt on the part of Claimant to enlarge the nature or the substance of the claim. Accordingly, we will consider the merits of the controversy.

Recently, the identical fact situation found here was reviewed by us. In fact, the precise issue involved in this dispute under the same Agreement was considered by the Board in Award 13975. We held as follows:

> "Employes fail to support with any evidence their argument that Section 1 of the 1956 Agreement intended to restrict the assignment of work to the positions it established. Considered as favorably as possible from the point of view of Employes' argument, Section 5 can at most be considered ambiguous; it was incumbent on Employes to prove by sound evidence in the record that the meaning they ascribe to the Section was the one intended by the parties. No such proof is in the record. We find no evidence in the record that Carrier violated the Agreement as claimed and we will deny the Claim."

It is well established that prior decisions affecting the same parties and agreement will be followed in subsequent awards where the issues are identical unless such prior decisions are palpably wrong. (Awards 11897, 10911 and others.) We find no substantial error in Award 13975 and must find that the principle of stare decisis has terminated the controversy. Accordingly, the claim must be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1967.

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