



Award No. 17235

Docket No. CL-17658

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6465) that:

(1) Carrier violated the terms of the currently effective agreement between the parties at Springfield, Missouri when on April 15, 1967 it failed and refused to properly compensate Chief Caller R. D. Garrison for overtime performed on the claim date.

(2) Chief Caller Garrison shall now be allowed the difference between the overtime rate of the position of Chief Caller, \$4.3101 per hour for eight hours and the amount already paid by the Carrier on April 15, 1967.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. D. Garrison occupied the position of Chief Caller with a work week of Tuesday through Saturday, Sunday and Monday rest days, hours of duty 7:59 A.M. to 3:59 P.M. rate of pay \$22.98 per day. On the claim date, April 15, 1967, which was one of Mr. Garrison's regularly assigned work days, he was required by the Carrier to double on the second shift Caller position working 3:59 P.M. to 11:59 P.M., rate of pay \$21.2125 per day account no qualified extra employees available. Mr. Garrison was only compensated at the overtime rate of the lower rated Caller position for the eight hours doubled rather than for eight hours at the overtime rate of the higher rate of his Chief Caller position to which he was entitled under the rules.

These claims have been handled with management up to and including Mr. T. P. Deaton, the highest Carrier officer designated to handle such claims, but not composed. See Employees' Exhibits 1(a) through 1(e) inclusive.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: This dispute arose in the Carrier's Freight Terminal at Springfield, Missouri. Springfield is located at the hub of the Carrier's system where two complete sets of callers are maintained in around-the-clock service, two on each shift, seven days per week. In other words, at Springfield, the Carrier has a Train Crew

The Organization contends that Claimant Garrison was entitled to be compensated at the punitive rate based on the rate of his regular Chief Engine Crew Caller Position.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a regularly assigned Chief Caller of Position No. 55, with work hours of 7:59 A.M. to 3:59 P.M., Tuesday through Saturday with rest days Sunday and Monday. On Saturday, April 15, 1967, Claimant, due to the regular assigned occupant of Engine Crew Caller Position No. 56 with work hours of 3:59 P.M. to 11:59 P.M., laying off, worked said position on said date after completing his own regularly assigned work. He was paid for said 8 hours at the punitive rate for working said Position No. 56 based on the lower rate of said position. Position No. 56 paid \$21.2125 and Claimant's own Position No. 55 paid \$22.9870 per day.

Claimant contends that he should have been compensated for working said Position No. 56 at the rate of his regular Position No. 55. In support of his claim, Claimant cites violations by Carrier of Rules 45, 48, 56 and 77; that Rule 45 governing continuous pay is applicable because he was on continuous duty for 16 hours; that Rule 48 is applicable because Claimant was properly notified and authorized by proper authority to work the second shift; that Rule 56 prohibits an employee, temporarily assigned to a lower rated position, from having his rate reduced; that Rule 77 prohibits changes in agreement unless notice is given and conference held, and no notice was served by Carrier on the employees for any change.

Carrier's defenses to this claim rest on the contention that Claimant was not assigned to a lower rated position on the claim date inasmuch as he was a volunteer and could have declined the vacancy without penalty; that Rule 55 of the agreement prohibits transferring rate of pay of a higher rated position to a lower rated position.

The Organization, on the property, relied mainly on a violation by Carrier of Rule 56 of the agreement. Said Rule provides:

"PRESERVATION OF RATES

Rule 56. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

This Board has been confronted with a similar issue such as here in a number of awards, which are conflicting.

Awards 12646 and 14388, cited by Carrier in support of its position, denied the claims on the basis of the Claimant being a volunteer for the overtime work and thus was subjected to the rate of the position filled.

However, we feel in this instance that such a theory is unwarranted. To us the Rule is clear and unambiguous. It says: "* * * employees temporarily assigned to lower rated positions shall not have their rates reduced." If we were to conclude that Claimant herein was a volunteer, we would be adding to, varying or altering the agreement, which this Board is not empowered to do. Therefore, it is our contention that said awards are not controlling in the determination of this dispute.

In support of its cause, the Organization has cited Award No. 9106. In said award this Board dealt with a similar rule as here in question. In said award, this Board stated:

"Rule 38, if applicable, accorded to Mr. Coleman the rate of pay to which he was entitled in his regular position as General Foreman. This construction seems clear from both parts of the first paragraph of the rule. It is specifically so provided in the second part of the paragraph. The first part assures to those assigned to higher rated positions that rate of pay. If nothing has been added, it might be argued that where the holder of a higher rated position was assigned to a lower rated position, he should receive the lower rate of pay. Such a surmise is removed by the second part of the paragraph when it expressly provides that 'employees *** assigned to lower rated positions shall not have their rates reduced.'"

See also Award 5924.

Therefore, it is the opinion of this Board that Carrier violated the agreement, and we must sustain the claim.

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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1969.

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