



Award Number 17666

Docket Number CL-18236

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6578) that:

1. The Carrier violated the rules of the Agreement extant between the parties when it failed to properly compensate Mr. W. S. Ivey for service performed on the third trick Interchange Clerk position on November 26, 1967.
2. Mr. W. S. Ivey shall now be allowed the difference between the 6 1/2 hours at the overtime rate he has already received and the 8 hours at the overtime rate he claimed for service on November 26, 1967.

EMPLOYEES' STATEMENT OF FACTS: On November 25, 1967 Mr. W. S. Ivey worked his regular assignment on the second trick position of Interchange Clerk at Stockton, California with assigned hours 4:00 P.M. to 12:00 Midnight. At the completion of that tour of duty he was released and went home. At 1:30 A.M. November 26, 1967 Mr Ivey was called back to work to fill the vacancy existing on the position of third trick Interchange Clerk. The short vacancy that existed on the third trick Interchange Clerk position was due to the fact that Mr. W. L. LeBeouf who was working the third trick Crew Clerk position had been taken ill and had gone home. Mr. O. J. Farmer who was filling the third trick Interchange Clerk position was stepped over to fill the Crew Clerk position and Mr. W. S. Ivey was called to fill the short vacancy on the third trick Interchange Clerk position.

Claim was filed with Agent H. K. Reese through Local Chairman Earl P. Miller's letter dated December 30, 1967 (Employees' Exhibit "A"). That claim was declined by the Timekeeper through his letter of February 5, 1968 (Employees' Exhibit "B"). Claim was thereafter handled in the regular manner up to and including Mr. W. A. Tussey, Manager of Personnel, the highest officer of the Carrier authorized to handle disputes on the property, as revealed in Employees' Exhibits "C" through "H".

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: During November of 1967, Carrier force maintained in its yard office at Stockton, California included the following positions:

(e) New positions or vacancies of 30 calendar days' or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the 30-day limit, they shall be immediately bulletined, showing, if practicable, probable or expected duration.

(f) Employees will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 40(d) or Rule 29."

"Rule 40(d)—Reducing Forces. Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancy (except as amended by Rule 30(h)) and/or vacancies occasioned by the filling of positions pending assignment by bulletin. When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee on that roster who has protected his seniority as provided in this rule, the senior qualified furloughed employee will be called to fill the position. Furloughed employees failing to return to service within 7 days after being notified (by mail or telegram sent to last address given) or give satisfactory reason for not doing so, will be considered out of the service. Employees hired for the performance of extra work shall be considered as furloughed employees under this rule."

(Exhibits Not Reproduced)

OPINION OF BOARD: The facts in this case are not in dispute. On the date involved, the Claimant, after completing his regular tour of duty and being released, was called to return to duty an hour and a half later and worked the last 6 1/2 hours of a regularly assigned 8 hour shift. The regularly assigned employee for that shift had previously performed the first 1 1/2 hours of the shift in question. Claimant was compensated for 6 1/2 hours work at the rate of time and a half and now claims the difference between the compensation he received and that of the full 8 hour shift at time and a half.

The pertinent rules of the Controlling Agreement relied upon by the parties are as follows:

"Rule 12. Eight consecutive hours or less, exclusive of the meal period, shall constitute a day's work, except as provided otherwise in this agreement.

This rule does not apply to hourly rated employees who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employees who lay off of their own accord before completion of the day's work.

Rule 20.

(a) Except where changing assignments in the exercise of seniority rights, or when furloughed employees are used on more than one shift, time in excess of 8 hours exclusive of meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

Rule 21. Notified or Called. Employees notified or called to perform work not continuous with, before, or after the regular work period (except as otherwise provided in Rules 20(g) and 22(b)) shall

be allowed a minimum of 4 hours' pay for 2 hours and 40 minutes' work or less and if held on duty in excess of 2 hours and 40 minutes, time and one-half shall be allowed on the minute basis.

* * * * *

Employees who have completed their regular tour of duty and have been released, called to return for further service shall be paid in accordance with the first paragraph of this rule.

Rule 31.

(d) New positions or vacancies of 30 calendar days' or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the 30 day limit, they shall be immediately bulletined, showing, if practicable, probable or expected duration."

It is contended by the Organization that the filling of the position for the 6 1/2 hours in question was done in accordance with Rule 31(d) as it was a short vacancy and that Rule 12 which defines a day's work as 8 hours or less requires the payment to Claimant of 8 hours work rather than the 6 1/2 hours for which he was compensated. There is no dispute as to the application of the time and a half rule. The Organization relies upon several awards including Award No. 10810 (Moore) as well as an interpretation by the Carrier in connection with the payment of a full 8 hours at the overtime rate where an employee performed less than the entire shift. However, in each of those instances the Claimant was the only employee who performed any work on the position during the 8 hour shift made the basis of their claim. In the instant claim, it is noted that the regularly assigned employee performed his duty during the first one and a half hours of the 8 hour trick. It is further noted that Claimant was compensated for a "day's work" on the date in question as a result of performing his regularly assigned duties. We find nothing in the Agreement which limits or restricts the application of Rule 21 to "casual" or "extra overtime" and inasmuch as Claimant was paid for a "day's work" for performance of his regularly assigned shift, we must conclude that there was no violation of Rule 12.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1970.