



Award No. 18084
Docket No. CL-18464

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6689) that:

1. Carrier violated the Clerks' Agreement when it improperly compensated Clerk M. J. Marques for service performed on August 21 and August 22, 1968 and that:

2. Clerk M. J. Marques shall now be allowed eight (8) hours' pay at the time and one-half rate for each of the dates of August 21 and August 22, 1968.

EMPLOYEES' STATEMENT OF FACTS: Claimant occupied a regular relief assignment in Transportation Department, Baltimore, Maryland at the Port Covington Yard Office.

On August 20, 1968, he worked his regular assignment as relief to the 11:00 P. M. to 7:00 A. M. Crew Dispatcher.

On August 21, 1968, he would have normally worked 11:00 P. M. to 7:00 A. M. as Desk Clerk (relief to this position); however, the Carrier utilized him to work 6:00 P. M. to 2:00 A. M., as Clerk at Sparrows Point Agency, Baltimore, Maryland.

Again, on August 22, 1968, he would have normally worked as Desk Clerk 11:00 P. M. to 7:00 A. M.; instead, the Carrier utilized him to work 6:00 P. M. to 2:00 A. M. as Clerk at Sparrows Point Agency.

For the date of August 21, 1968, the Claimant was paid 5 hours at the overtime rate and 3 hours at the straight time rate. The Carrier premised its reasoning for this type of payment on the decision by Referee Jacob Seidenberg in Award No. 2, Public Law Board No. 3 (BRAC v. Western Maryland Railway). In that award the Referee hinged overtime payment upon work in addition to the claimant's own within the twenty-four hour period.

The factual situation in that Award is dissimilar to that which we are confronted with herein. In that Award, the Claimant occupied an extra

board position. Herein, the Claimant occupied a regular assigned relief position.

On August 28, 1968, Carrier representative, Mr. C. L. Amos, Assistant Superintendent, denied the claim as entered, to the Claimant. (See Employees' Exhibit A.)

Appeal of his decision was made by the Employees on September 22, 1968. (See Employees' Exhibit B.)

The appeal was declined in letter dated November 18, 1968 by the System Superintendent. (See Employees' Exhibit C.)

Employees rejected the decision rendered by the System Superintendent and appealed the matter in letter dated January 4, 1968 to the Manager of Labor Relations. (See Employees' Exhibit D.)

Manager of Labor Relations, Mr. F. B. Plummer, in letter dated February 7, 1969, rejected the appeal. (See Employees' Exhibit E.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Mr. M. J. Marques was regularly assigned as a relief Clerk on Position No. 33 at the carrier's yard office at Port Covington, Baltimore, Maryland. This position was bulletined with work hours 11:00 P. M. to 7:00 A. M., with rest days on Sunday and Monday.

On August 20, 1968, he worked his regular position as Yard Clerk at Port Covington from 11:00 P. M. to 7:00 A. M. On August 21st and 22nd, there was a vacancy as Clerk at Sparrows Point, approximately 13 miles from Port Covington, with work hours 6:00 P. M. to 2:00 A. M. There were no qualified extra clerks available to fill the Sparrows Point position, and it was offered to and accepted by the claimant. The rate of pay for the position at Sparrows Point was \$3.5350 per hour, and the rate of the yard clerk position was \$3.1266 per hour, a difference of about \$3.27 per day.

The claimant seeks payment at the rate of time and one-half for all service performed on August 21st and August 22nd. He was compensated as follows:

August 21, 1968 - 5 hours overtime, 3 hours straight time

August 22, 1968 - 8 hours straight time

OPINION OF BOARD: Claimant was regularly assigned as a relief clerk on Position No. 33 at the Carrier's yard office at Port Covington, Baltimore, Maryland. This position was bulletined with work hours 11:00 P. M. to 7:00 A. M., with rest days on Sunday and Monday.

On August 20, 1968, he worked his regular position as Yard Clerk at Port Covington from 11:00 P. M. to 7:00 A. M. On August 21 and 22 there was a vacancy as Clerk at Sparrows Point, approximately 13 miles from Port Covington, with work hours 6:00 P. M. to 2:00 A. M. There were no qualified extra clerks available to fill the Sparrows Point position and Claimant accepted the call to work from 6 P. M. to 2 A. M. as Clerk, Sparrows Point Agency, on both dates.

Claimant was compensated for August 21 for 5 hours overtime and 3 hours straight time and for August 22 for 8 hours straight time. Carrier premised the payment for August 21 on the fact that he had worked more than 8 hours in 24 computed from his previous starting time (11 P. M., August 20) and payment at the straight time rate for August 22 because he worked only 8 hours within a 24 hour period. Claimant seeks payment at the rate of time and one-half for all service performed on August 21 and August 22.

The Carrier submits that the question involved in this case has previously been decided on this railroad, involving these same parties, and involving the same Claimant, in Award No. 2 of Public Law Board No. 3. We have studied that decision and note a difference in this instant case. That Award involved an extra board employe, but in this case the Claimant is a regularly assigned employe with bulletined hours of assignment. Rule 40(a) provides:

"(a) Employes notified or called to perform work not continuous with, before or after, the regular work period shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be paid on the minute basis."

Upon consideration of the entire record, exhibits introduced and the collective bargaining agreement, it is determined that the Claimant is entitled to the overtime rate for work performed on both days. In view of the clear wording of the Agreement we must sustain this 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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1970.