



Award No. 18425

Docket No. CL-18751

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6782) that:

1. The Carrier violated the controlling agreement between the Brotherhood and the Carrier when on September 10, 1968, a vacancy occurred on position of Baggage-Mail Handler, 6:00 A.M. to 3:00 P.M., due to the absence of the regular incumbent and Carrier failed to fill the vacancy in the manner provided by the agreement.

2. Carrier shall now be required to compensate claimant for wage loss suffered by him due to the mishandling on the part of the Carrier Representatives for five hours and twenty minutes at the overtime rate of pay of the position of Baggage-Mail handler which has an hourly rate of pay of \$3.0312.

EMPLOYEES' STATEMENT OF FACTS: Claimant Isaiah Branch is in the employ of the Carrier at Pocatello, Idaho in the capacity of Baggage-Mail Handler, a position encompassed by the agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Carrier which he holds by virtue of his seniority on Consolidated Station Clerks Roster 81-2, his seniority date being May 12, 1956.

On September 10, 1968, a vacancy occurred on position of Baggage-Mail Handler, 6:00 A.M. to 3:00 P.M., due to absence from duty of regular incumbent, W. Hardy. The vacancy could not be filled at the pro rata rate due to a lack of extra or furloughed employees and the Carrier had to fill the vacancy at the overtime rate, in which case the Carrier was contractually obligated to award the overtime vacancy to the senior available qualified employee in that department. Claimant Branch met all of these qualifications.

Claim was filed by the Vice General Chairman with Superintendent H. J. Bailey on September 24, 1968. (Employees' Exhibit "A")

Claim was declined by the Superintendent on September 26, 1968. (Employees' Exhibit "B")

between the Carrier and the Organization, effective May 1, 1955, as amended by the agreement effective July 15, 1967, copies of which are on file with your Honorable Board.

Superintendent Bailey immediately instituted an investigation of the transaction, developing that on the claim date Mr. Branch was also observing a rest day of the position occupied by him and that an effort had been made by telephone to locate him for Hardy's vacancy but he failed to respond to the call. Vice-General Chairman Hronek was advised accordingly (Carrier's Exhibit B) and the claim on behalf of Branch was denied.

On November 19, 1969, Vice-General Chairman Hronek appealed the claim to Supervisor of Wage Schedules V. W. Hall (Carrier's Exhibit C), citing again Rule 41 and, in addition, Rule 12 as the basis for the claim in Mr. Branch's behalf.

Wage Supervisor Hall denied the claim on January 15, 1969 (Carrier's Exhibit D) for reasons similar to those of Superintendent Bailey, i.e., that claimants unavailability nullified any right that he might otherwise have had to the service sought.

On February 18, 1969, the Organization's General Chairman, F. A. Hallberg, appealed the dispute to the undersigned (Carrier's Exhibit E) maintaining that on the date in question claimant arose at 5:30 A.M. and spent the day at home, the implication being that had claimant been called, as alleged by the Carrier, he would have been at home to answer the phone.

The subsequent handling of the dispute on the property, as reflected by Carrier's Exhibits F through I, has revolved around the conflict in facts and the credibility of Carrier's evidence that an effort was made to locate claimant for the vacancy created by Hardy's illness and that he did not respond to the call.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 10, 1968 Mr. T.W. Hardy reported for his assignment as Baggage-Mail Handler at 6:00 A.M. and shortly thereafter laid off because of sickness. The vacancy could not be filled at the pro rata rate due to the lack of extra or furloughed employees. The Carrier was obligated to fill the position at the overtime rate by using the senior available qualified employee in that department.

It is agreed that the Carrier was obligated to make a reasonable attempt to contact the Claimant. The record discloses that during the handling on the property no proof was ever submitted to substantiate the Carrier's contention that Claimant was called. Since the right of the Claimant to be called is not disputed the Carrier must sustain the burden of proving that it called the Claimant. This it failed to do.

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.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.