



Award No. 18658

Docket No. CL-18862

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**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6851) that:

1. The Carrier violated the Clerks' Agreement when it failed and/or refused to transfer Mr. L. L. Hamlin, Jr. to the Line Desk Clerk position to which he was assigned within five (5) days after issuance of assignment bulletin.

2. The Carrier shall be required to compensate Mr. L. L. Hamlin the difference between pro rata and punitive rate October 26 and 27, 1969, which are the rest days of his new assignment.

EMPLOYES' STATEMENT OF FACTS: 1. Clerk L. L. Hamlin, Jr., was regularly assigned to Line Desk Clerk No. 573 with assigned hours 11:00 P. M. to 7:00 A. M., rest days Tuesday and Wednesday.

2. Under date of October 8, 1969, by Bulletin No. 303, Line Desk Clerk No. 570 was advertised for bids, assigned hours 11:00 P. M. to 7:00 A. M., rest days Sunday and Monday. Employees' Exhibit No. 1.

3. By bulletin No. 303-A, dated October 13, 1969, Clerk Hamlin was assigned to Line Desk Clerk No. 570. Employees' Exhibit No. 2.

4. Clerk Hamlin was transferred to his new assignment of Line Desk Clerk No. 570 October 28, 1969.

5. The rates of the two positions involved are the same.

The instant dispute has been handled in accordance with the procedural requirements of the current agreement between the parties, up to and including the highest officer designated for that purpose, discussed in conference and upon final denial is properly before your Honorable Board for adjudication. (Employees' Exhibits Nos. 3 through 7)

(Exhibits not reproduced.)

seniority performing Clerk duties to which claimant Meadows was not allowed to exercise his seniority to go on a new assignment. The facts in this case are quite different in that Mr. Hamlin was regularly assigned and working when he bid from one job to another — both jobs paying the same rate of pay and therefore he did not suffer any monetary loss. Carrier calls the honorable Board's attention to Award 13376 with Referee Hall in which a similar case involving an employee was handled and we call your attention to the opinion of the Board in which they state:

"There is nothing in the record indicating the claimant has in any respect sustained any loss of earnings or that claimant has in any way been damaged."

All correspondence has been properly handled and is attached as Carrier's Exhibits A, B, C, D, and E.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 13, 1969 Claimant L. L. Hamlin Jr. was awarded from a bulletin Line Desk #570. At the time he held the position of Line Desk #573. Both of these positions carried the same working hours and rates of pay but had different rest days. #570 was off Sunday and Monday and #573 was off Tuesday and Wednesday. For training purposes Claimant was retained on position #573 until Tuesday October 28, 1969 on which day he commenced his duties on position #570.

Rule 9(d) of the Agreement came into force when the Carrier retained Claimant on his old position for a period in excess of 5 days:

"9(d) Employees awarded bulletined positions will be transferred to such assignment within five (5) days after issuance of assignment bulletin. Employees not transferred within the five (5) day period will be paid at the rate of the position awarded."

The rate of pay for both positions was the same so Carrier maintains it was in full compliance with the Agreement. Claimant maintains that because Carrier caused him to work the rest days of his new position he is entitled to be compensated at the overtime rate for work performed on those days.

The rest days of position #570 belonged to Claimant under his award of the position from bulletin. After the fifth day following the issuance of the assignment bulletin Claimant was entitled to the overtime rate for work performed on those rest days. See Awards 5879 and 13114.

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 29th day of July 1971.