

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6940) that:

(1) The Carrier violated the effective Agreement, specifically Rule 33(b)-2 at Steelton, Minnesota, when it failed to call the regularly assigned occupant of the Accounting-Billing Clerk position for overtime work occurring on that position, and in lieu thereof called an employee junior to Claimant who had already performed 8 hours of work that day.

(2) Carrier shall be required to compensate Claimant, L. D. Johnson, for 8 hours at the overtime rate of Accounting-Billing Clerk for December 23, 1969.

EMPLOYEES' STATEMENT OF FACTS: Claimant Larry D. Johnson is regularly assigned on the 8:00 A.M. Accounting-Billing Clerk assignment at Steelton with Tuesday and Wednesday as assigned rest days. The 8:00 A.M. Accounting-Billing Clerk position is relieved by Relief Assignment No. 3 on Tuesday and Wednesday of each week.

On the date of this claim the regularly assigned incumbent to Relief Assignment No. 3 did occupy that position; but assistance in acquainting him with the position was required.

Under the provisions of the effective Agreement, Claimant, L. D. Johnson, regular incumbent 5 days per week to the 7-day position, was entitled to be used at the overtime rate. Carrier instead improperly used an employee who had worked the Midnight to 8:00 A.M. Clerk-Weigher position. The Carrier improperly doubled that employee to the 8:00 A.M. shift on December 23, 1969.

The work performed improperly by the junior employee was compensated for at the pro rata rate. Rules 24 and 31(a) of the effective Agreement provide that time worked in excess of 8 consecutive hours is to be compensated for

employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 25."

"RULE 33.

ASSIGNMENT OF OVERTIME

(b) When it is known that overtime is required for a full shift, it will be assigned in the following manner:

1. To the senior available extra or unassigned employees who do not have forty (40) hours of work that week.
2. To the senior employees assigned to the class of work who are off on days of rest and hold assignments on that particular shift upon which overtime work is to be performed."

Attached as Carrier's Exhibit A is a copy of the correspondence which was exchanged during the handling of this claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that at the time of the occurrence giving rise to the dispute herein Claimant was regularly assigned to the 8:00 A. M. Accounting-Billing Clerk assignment at Steelton with Tuesday and Wednesday as assigned rest days. The assignment was relieved by Relief Assignment No. 3 on Tuesday and Wednesday. On Tuesday, December 23, 1969, the occupant of Relief Assignment No. 3 needed assistance to acquaint him with the position. K. C. Bush, who the Carrier contends was the senior, qualified furloughed employee, was used to assist the occupant of Relief Assignment No. 3. Bush had worked eight hours, commencing at 12:00 Midnight December 22, and the Petitioner contended in the handling on the property that as Bush had worked eight hours commencing at Midnight on December 22, he was not available at straight time rate to perform the work on the 8:00 A. M. Accounting-Billing clerk position on December 23, and that Claimant Johnson was entitled to be called on December 23, his regular rest day, to give assistance to the rest day relief employee in accordance with Rule 33(b)2. The Carrier contends that Bush was properly assigned under Rule 12(c, Rule 25(j) and Rule 33.

The "Note" under Rule 24 defines a day as "a period of twenty-four (24) hours beginning with the starting time of the employee's previous regular shift."

Bush, having worked eight hours beginning at 12:00 Midnight December 22nd, was not, in the opinion of the Board, in the status of an available furloughed employee at 8:00 A. M., December 23rd. It is our conclusion, based upon the entire record, and all the rules cited, that Claimant was entitled to be used on his rest day under the provisions of Rule 33(b)2. In this connection see Award 16793, involving a somewhat similar situation. The claim will be sustained.

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 10th day of December 1971.