



Award No. 18945

Docket No. CL-19024

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6855) that:

1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to properly compensate employe J. Wuerl for work performed on September 1, 1969.

2) Carrier shall not be required to properly compensate employe J. Wuerl at the proper rate for work performed on September 1, 1969.

EMPLOYEES' STATEMENT OF FACTS: Employe J. Wuerl is the regularly assigned occupant of Head Car Record Clerk Position 07110 at Muskego Yard, Milwaukee, Wisconsin with assigned hours of service from 7:00 A. M. to 4:00 P. M., Monday through Friday, and Saturday and Sunday rest days; rate of pay \$28.4972 per day.

On Monday, September 1, 1969, the Labor Day Holiday, due to the regular occupant of Chief Clerk Position 09520 being unavailable, employe Wuerl was assigned by proper authority to fill Chief Clerk Position 09520 on that holiday. Chief Clerk Position 09520 carries a rate of pay of \$27.0609 per day.

Timeslip claiming 8 hours pay at the time and one-half rate of his higher rated Head Clerk Position 07110 submitted for Monday, September 1, 1969 (Labor Day) by employe Wuerl was disallowed by Agent R. Chalifoux and he was allowed payment for 8 hours at the time and one-half rate of the lower rated Chief Clerk Position for service rendered on that date. See Employees' Exhibit "A."

The claim was appealed to Superintendent N. H. McKegney on October 27, 1969 and to Mr. L. W. Harrington, Vice President-Labor Relations on December 24, 1969 and was declined by each in turn.

Discussion of the claim in conference on June 5, 1970 produced no settlement.

Attached as Employees' Exhibit "B" is copy of General Chairman's letter to Mr. Harrington dated February 19, 1970.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF CLAIM: Claimant J. Wuerl is the regularly assigned occupant of the Head Car Record Clerk Position 07110 that is scheduled to work 7:00 A.M. to 4:00 P.M. Monday through Friday with Saturday and Sunday as assigned rest days. The negotiated daily rate for Position 7110 is \$28.4972.

On Monday, September 1, 1969 the Labor Day Holiday, Chief Clerk Position 09520 was vacant. It was necessary that this position be worked on the Labor Day Holiday.

Consistent with applicable schedule rules which provide for filling assignments at the overtime rate, Claimant J. Wuerl, whose regular assigned position was annulled on this date, was called and offered the opportunity to work Position 09500, which carries a negotiated rate of \$27.0609 per day.

Claimant Wuerl accepted the overtime work offered and, consistent with applicable schedule rules, he was paid eight pro rata hours for September 1, 1969 at the rate applicable to his regularly assigned position (\$28.4972) as holiday pay, and eight hours at the overtime rate applicable to the position he worked ($\$27.0609 \times 1\frac{1}{2} = \40.5914), or a total of \$69.0886.

Attached hereto as Carrier's Exhibits are copies of the following letters:

CARRIER'S EXHIBIT

Letter written by Mr. L. W. Harrington,
Vice President-Labor Relations to
Mr. H. C. Hopper, General Chairman
under date of February 16, 1970..... "A"

Letter written by Mr. L. W. Harrington
to Mr. H. C. Hopper under date of
July 1, 1970 "B"

(Exhibits not reproduced)

OPINION OF BOARD: Claimant filled another position on Labor Day, 1969, and was paid by Carrier for the time worked at the rate of the position he occupied instead of the higher rate of his regular position.

Carrier argues that Rule 17(a) of the Agreement, was not intended by the parties to apply in overtime situations. It shows a practice extending for fifty years to support this interpretation and states that further support is found in Rule 33(c), since that rule would, Carrier states, lack meaning of Rule 17(a) applied to overtime situations.

Claimants rely on the language of Rule 17(a), which they point out does not have a stated exception for overtime situations. They also state that Rule 33(c) is not without meaning if not applied as Carrier states it must be applied. Rule 33(c) say the Claimants indicates that the parties intended to provide for eight hours pay at the higher rate for service on rest days and does not modify the clear language of Art. 17(a).

The applicable language in the Agreement is:

"RULE 17 -- PRESERVATION OF RATES

(a) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

"RULE 33 -- SERVICE ON REST DAYS

* * * * *

(c) Service rendered by an employee on his assigned rest day, or days, relieving an employee assigned to such day shall be paid at the rate of the position occupied or his regular rate, whichever is the higher, with a minimum of eight (8) hours at the rate of time and one-half."

The contentions of both parties are not new to this Board. Except for the extensive proof of past practice offered by Carrier in this case, the same arguments were made to the Board in Award No. 17618 (Referee Dugan). In Award 17618 the Board held as follows:

"Carrier would have us interpolate as a part of said Rule 17 that 'overtime' is excepted from the provisions of said Rule. With this contention of Carrier, we cannot concur. To the contrary we agree with the Organization that Rule 17 provides that employees will not have their pay rates reduced when assigned to lower rated positions but shall receive the higher rates of pay while occupying such position; and that Claimant properly claimed the higher rate of his regular assigned position when Carrier failed to call him for the lower-rated temporary vacancy. We will therefore sustain the claim."

While there may be situations in which the Board should refuse to follow an Award made between the identical parties on identical language of the Agreement this is not such a case. The Board will therefore follow Award No. 17618 and sustain the 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 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

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

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 14th day of January 1972.

**CARRIER MEMBERS' DISSENT TO AWARD 18945, DOCKET CL-19024
(Referee Edgett)**

For the reasons stated in our Dissent to Award 17618, we dissent.

G. T. Naylor

P. C. Carter

R. E. Black