

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20882
Docket Number CL-20903

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and
Station Employees
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7622) that:

1. Carrier violated Rule 31 and related rules of the Clerks' Rules Agreement when it failed to properly compensate Mr. T. W. Mayers, Little Rock, Arkansas, for service performed June 30, 1973, between the hours of 3:00 P.M. and 11:00 P.M. (Carrier's File 205-4811)

2. Carrier shall now be required to compensate Mr. Mayers \$7.61, which represents the difference in punitive rate of pay between that of his regular assignment and the position of IBM Clerk #3, which he worked temporarily.

OPINION OF BOARD: Claimant is regularly assigned as Chief Clerk, 11:00 p.m. to 7:00 a.m., Friday through Tuesday. His daily pro rata rate is \$44.01, and his punitive rate is \$66.02.

On Saturday, June 30, 1973, Claimant was assigned to work - from 3:00 p.m. to 11:00 p.m. at a position which has a pro rata rate of \$38.94. For his services, Claimant received the punitive rate of \$58.41 for said position, rather than his punitive rate.

The employees contend that the Carrier violated Rule 31(c):

"(c) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced."

Carrier cites certain Awards which have held against claims such as here under review, and it stresses that the employees seek to have this Board ignore a long standing practice on this property.

Initially, we will consider the assertion that the record establishes a long standing past practice showing an application of the rule which requires a denial of the claim. Carrier has attempted to submit

certain evidence and information by means of its rebuttal document. That material was not presented or considered while the dispute was under consideration on the property, and clearly it may not be raised, for the first time, to this Board.

In its Ex Parte Submission, Carrier speaks in terms of "intention" of the rule, "years of practice" and "50 years of interpretation." But, we are unable to find that any evidence to support such conclusions was advanced on the property. On four (4) separate occasions, Carrier denied the claim without specifying any past practice considerations. In the final denial, issued more than nine (9) months after submission of the claim, Carrier uses such phrases as "novel interpretation" and "well established", but certainly, it produced no evidence of the nature now relied upon.

We have noted certain conflicts in the cited Awards, but, the language of the rule appears so clear to us that we are compelled to follow the more recent trend which have sustained claims of this nature. In short, we feel that the mandates of Rule 31(c) are clear, and that Carrier was required to pay the higher punitive rate in an overtime situation.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.

CARRIER MEMBERS' DISSENT TO AWARD 20882, DOCKET CL-20903

(Referee Sickles)

We dissent. The matters of record which clearly establish this claim is invalid are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

S J Naylor

M. F. Eubank

P. C. Carter

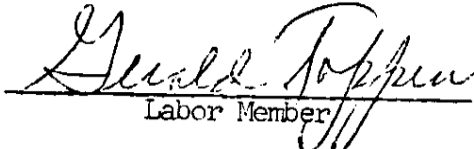
A M Younkman

LABOR MEMBER'S ANSWER
TO
CARRIER MEMBERS' DISSENT TO AWARD 20882 (DOCKET CL-20903)
(Referee Sickles)

Disputes submitted to this Board are adjudicated upon consideration of the facts and evidence in the official record as detailed and explained by the parties to the dispute, not upon Carrier Member Memoranda.

Carrier Member Memoranda, regardless of length or sophistry, are not a substitute for, nor do they change, either the record or the facts.

The "dissent" has no bearing on the validity of the award.


Labor Member

1-6-76