

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21016
Docket Number CL-20892

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Robert W. Blanchette, Richard C. Bond
(and John H. McArthur, Trustees of the
(Property of Penn Central Transportation
(Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7680) that:

(a) The Carrier violated the Rules Agreement dated February 1, 1968, particularly Rule 4-A-6 and others in effect between the Brotherhood of Railway, Airline and Steamship Clerks and itself, when the Carrier improperly paid Mr. B. F. Chase for work performed on position #104 on January 28, 1972. Mr. Chase was paid at the rate of the position worked instead of the rate of his regularly assigned position which was position #1, Chief Car Control Clerk, paying a rate of \$36.73 per day, located in Livernois Yard Office, Detroit, Michigan.

(b) The Carrier now be required to properly compensate Mr. B. F. Chase at the higher rate of pay or a difference of \$2.43 for January 28, 1972.

OPINION OF BOARD: Claimant was regularly assigned to a position of Chief Car Control Clerk with hours of 7:30 A.M. to 3:30 P.M. with a rate of \$36.73 per day. On January 28, 1972 Claimant doubled over onto a Car Control Clerk position with hours of 3:30 P.M. to 11:30 P.M. and a rate of \$34.30. For this latter service, Claimant was compensated at the Car Control Clerk's rate on a punitive basis.

Petitioner alleges that Claimant should have been paid at his regular rate when he doubled over to another vacancy. Rules 4-A-6 and 4-E-1 are relevant to this dispute and provide in pertinent part:

"RULE 4-A-6 -- NOTIFIED OR CALLED

(a) Regularly assigned employees notified or called to perform work between their regular work periods and not continuous therewith will be allowed a minimum of three hours at the pro rata rate for two hours work or less; time held on duty in excess of two hours to be paid for at the rate of

"time and one-half. Regular employees so called who are unable, because of being called, to cover their regular assignment will be paid not less than they would have received if they worked their regular assignment.

(b) Regularly assigned employees notified or called to perform work continuous with, and in advance of their regular work period, will be allowed time and one-half on the minute basis for such advance time.

(c) A regularly assigned employee notified or called under the provisions of paragraphs (a) or (b) of this rule (4-A-6) perform service in other than his regular position will be compensated at the rate of the position filled or at his regular rate, whichever is higher."

* * *

"RULE 4-E-1 -- PRESERVATION OF RATE

(a) Employees assigned temporarily or permanently to higher rated positions will receive the higher rates while occupying such positions; employees assigned temporarily to lower rated positions will not have their rates reduced. Extra employees will be compensated at the rate of the position to which temporarily assigned.

(b) A 'temporary assignment' for the purpose of this rule (4-E-1) contemplates the fulfillment of all the duties and the assumption of all the responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work in the presence of the regular employee. Assisting a higher rated employee, due to a temporary increase in the volume of work, does not constitute a temporary assignment."

Carrier argues that Rule 4-A-6 is not applicable to this dispute since Claimant did not perform the extra service in advance of his regularly scheduled hours. Further, it is contended that Rule 4-E-1 is also inapplicable since "...That Rule is applicable only in the case of an employee working on another position in lieu of his own position, which is not the situation here involved."

We cannot agree with Carrier's reasoning. Rule 4-E-1 is entitled Preservation of Rates and is quite clear and unequivocal. The phrase "...employees assigned temporarily to lower rated positions will not have their rates reduced" does not contain any qualification that it is

applicable only in the case of an employee working a position in lieu of his own, as suggested by the Carrier. In addition, the identical issue was presented to this Board in Award 9106 which involved the same Organization and the predecessor Carrier and an identical rule; and in that Award we held that the employee who doubled over in a lower rated position should have been paid at his regular rate. In this dispute, we support the reasoning in the earlier Award and will 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.