

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21383
Docket Number CL-21403

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Port Terminal Railroad Association

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8062, that:

1. The Association violated the Agreement between the parties at Houston, Texas, January 13, 1975, when it required Extra Clerk T. D. Sparks to work two eight (8) hour shifts on the same day, then failed to properly compensate him for the hours of service in excess of eight (8) on that day.

2. The Association shall now allow Clerk T. D. Sparks an additional four (4) hours' pay at the pro rata rate of Assistant Chief Yard Clerk Position No. 360 which represents the difference in pay between the pro rata rate allowed and the time and one-half rate due for January 13, 1975.

OPINION OF BOARD: Claimant was assigned to the clerical extra board. On January 13, 1975 he was called from the extra board to protect an assignment from 7:00 A.M. to 3:00 P.M. On the same date there was an outstanding job, from 11:00 P.M. to 7:00 A.M. under bulletin. When no applications were received for the vacancy, as the junior qualified extra employe, Claimant was assigned to the position. He was allowed pro rata pay for the second eight hours of work, thus triggering the claim herein.

The most relevant rules cited by the parties provide:

"ARTICLE 4
Overtime and Calls

Rule 11.

- (a) Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis, at time and one-half.

* * *

- (e) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the

"basic straight time rate except where such work is performed by an 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 7 (Work Week Rule).

- (f) Employees worked on more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an 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 7 (Work Week Rule).
- (g) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under these rules in computations leading to overtime."

"ADDENDUM NO. 3
EXTRA BOARD AGREEMENT

* * *

Rule 3.

- (c) In the event no written application for a vacancy is received in line with the provisions in paragraph (a) and (b) above, the junior qualified extra employee will be assigned subject to the provisions of these paragraphs."

Petitioner in essence contends that Claimant was assigned to the second position under the extra board agreement and did not exercise his seniority in any fashion to obtain the position. Hence it is concluded that he is entitled to time and one-half for the second eight hour stint in his twenty four hour day.

Carrier argues that Claimant moved from the extra board to a regular assigned position on the date involved, by exercise of seniority, and therefore is not entitled to the punitive rate. Rules 11 (e) (f) and (g) are relied on in support of Carrier's position.

It must be noted initially that Rules 11 (e) (f) and (g) deal with work in excess of forty hours in a work week or work on more than five days in a work week; additionally, those provisions deal with moving from one assignment to another, or to or from an extra list. In the instant case an examination of the record on the property indicates that Petitioner from the beginning asserted that Claimant was assigned to the second position since no bids were received. Carrier, on the other hand, argued that Claimant had been placed on the position, a regular assignment, by virtue of the agreement and his seniority. Nowhere is it contended by Carrier that Claimant bid for the position and it is quite evident that he was placed on the job by virtue of being the junior qualified employee, under the terms of Rule 3 (c) supra.

It is also evident from the record that Claimant did not exercise his seniority, as that term is generally used, to obtain the second position; rather he was assigned to the vacancy since no bids had been received. Furthermore, it appears that the vacancy was a temporary one subject to being filled in accordance with Section 3 of the Extra Board Agreement. For these reasons, it is apparent that Rule 11 (a) is applicable to this situation and the Claim must 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.

A W A R D

Claim sustained.

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By Order of Third Division

ATTEST:

C.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.

