

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21434
Docket Number CL-21375

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7957) that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, when it transferred work from McKees Rocks, Pennsylvania to the Centralized Agency at Pittsburgh, Pennsylvania.

(b) Clerk Anthony J. Vallus be compensated for eight (8) hours at the applicable punitive rate of pay for each of the following dates; viz - April 22, 23, 24, 25, 26, 29, 30, May 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 28, 29, 30, 31, June 10, 11, 12, 13, 14, 17, 18, 1974.

OPINION OF BOARD: Both parties to this dispute agree that there was an Agreement violation in this case and the sole issue to be determined is the amount of compensation due Claimant.

First it is clear that one issue is the days for which the compensation is due Claimant. Carrier contends that Petitioner is in error in claiming additional pay for 36 days since Claimant only performed the work in issue on 11 days. In a previous dispute which was settled by the parties, involving Clerk Rosfeld, he was paid added compensation for all the days on the higher position since there was no record of which days he actually performed the work in question. In this case, the dates are known, as specified by Carrier; there was no response by Petitioner to this aspect of the case and we find the Carrier's position to be persuasive.

The second issue is the quantum of compensation due Claimant for each of the eleven days. Carrier argues that the Rosfeld settlement on the property is ample precedent for compensation to equal the difference in rates of pay of the two positions. Petitioner contends that the Rosfeld settlement was a compromise and is no precedent, particularly in view of past Awards of this Board. Carrier also contends that there is no agreement justification for an additional day's pay at the punitive rate. It is also noted that there is no penalty provision in the applicable Agreement.

While we recognize the long-standing divergence of views with respect to damages or penalty payments in situations such as this, we believe that each case must be evaluated on its own merits. In this case while there was a settlement on the property which would make the reparation the difference in pay between the two positions, there also was a prior award in a related infraction which held that the appropriate compensation was eight hours' pay at the pro rata rate - Award 6308 involving the same parties. We find no support for Petitioner's request for punitive payments for the days involved. However, in view of all the circumstances herein and the earlier case related to the same problem, and in order to preserve the integrity of the Agreement, we find that the proper compensation in this instance should be an additional pro rata day's pay for each of the eleven days specified.

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 to the extent indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary



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