

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21471
Docket Number CL-21061

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7764, that:

1. Carrier violated the Clerks' Rules Agreement, which became effective March 1, 1973, when it required Clerk, Mr. Floyd Thompson, to work position of Material Clerk No. 104, Fort Worth, Texas, June 11, 12, 13, 14, 15, 18, 19, 20, 21 and 22, 1973, and then refused to properly compensate him pursuant to Rule 21 (a) of the Clerks' Rules Agreement. (Carrier's File 304-348)

2. Carrier shall now be required to compensate Mr. Floyd Thompson for an additional five and one-half hours at the rate of time and one-half for work performed on each of the aforementioned dates.

OPINION OF BOARD: On the claim dates Material Handler T. Roberts was on his scheduled vacation. The scheduled hours of his position were 5:00 AM to 1:30 PM, Monday through Friday. Claimant Floyd Thompson was regularly assigned to the position of the General Material Foreman at the same location (Fort Worth, Texas) Monday through Friday, with regularly assigned hours of 7:30 AM to 4:00 PM. On the claim dates Mr. Thompson was required to report to work at 5:00 AM -- two and one-half hours prior to his regularly assigned starting time -- in order to perform work normally performed by the vacationing Mr. Roberts. For this additional work Mr. Thompson was compensated at time and one-half his regular rate as General Material Foreman. The claim is that Mr. Thompson is entitled to eight hours pay at time and one-half, instead of two and one-half hours pay at the same overtime rate, under the Basic Day Rule of the parties' Schedule Agreement. This Rule 21(a) provides:

"Except as otherwise provided in the agreements between the parties, eight consecutive hours or less, exclusive of the meal period, shall constitute a day's work, for which eight hours' pay will be allowed."

Since Claimant Thompson worked his regular shift each day of the claim in addition to two and one-half hours before the commencement of his shift, Carrier applied Rule 25(a) of the Agreement, which states in pertinent part:

"....time in excess of eight (8) hours, exclusive of the meal period, on any day will be considered over-time and paid on the minute basis at the rate of time and one-half."

Carrier states that claimant was paid the overtime rate of his regular assignment for service performed in advance of but continuous with his assigned starting time as provided in Article 10(b) of the Vacation Agreement, which reads:

"Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates."

Thus we are confronted with the question as to whether claimant was entitled to eight hours' pay at time and one-half rate or the time he actually worked on overtime--namely two and one-half hours per day.

This is not a case in which another employee claims he or she should have been used instead of the General Material Foreman. Also this is not a case in which the employee who is used could have been available for all the vacationing employee's assigned hours of work. We have seen that after the first two and one-half hours on the claim dates, the substituting employee commenced his regular duties.

We think claimant was properly compensated for the period of time he worked on the position of the vacationing employee.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1977.