

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21659  
Docket Number CL-21450

Robert W. Smedley, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees

PARTIES TO DISPUTE:

(  
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7978, that:

1. Carrier violated the Clerks' Rules Agreement, particularly Rules 49 (g), 49 (h) and 55, at Schiller Park, Illinois, when it failed and refused to properly compensate Claimants Wayne T. King and K. R. Knutson for overtime work performed.

2. Carrier shall now be required to compensate Claimants Wayne T. King and K. R. Knutson for the difference between the overtime rate of their regularly assigned positions and the overtime rate of lower rated positions filled on overtime on each of the following dates, and for each subsequent date that this violation continues. Subsequent dates to be determined by a joint check of Carrier's records.

WAYNE T. KING

November 17, 1973 - Position Code NO. 42487  
November 19, 1973 - Position Code No. 42487  
November 20, 1973 - Position Code No. 42487  
November 25, 1973 - Position Code No. 42483  
November 26, 1973 - Position Code No. 42487  
December 2, 1973 - Position Code No. 42483  
December 10, 1973 - Position Code No. 42487

K. R. KNUTSON

November 6, 1973 - Position Code No. 42487  
November 24, 1973 - Position Code No. 42487  
November 27, 1973 - Position Code No. 4287  
November 30, 1973 - Position Code No. 42490  
December 7, 1973 - Position Code No. 42487  
December 14, 1973 - Position Code No. 42487

OPINION OF BOARD: On claim dates, Claimants filled overtime vacancies on positions paying rates lower than that of their regular assignments. Claimants are seeking the higher rate of payment of their regular positions in lieu of the lower rate of the position worked which Carrier paid. Determination of the claim depends principally upon the application of the following rules:

"RULE 49. OVERTIME.

(g) Except as provided in Rule 17, Short Vacancies, when an employee is directed for any reason to work on a shift in addition to his own in any twenty-four (24) hour period, such work will be considered overtime and paid at the overtime rate; if the rates of pay on the involved positions are not the same, overtime will be computed on the basis of the higher rate.

(h) Except as provided in Rule 17, Short Vacancies, service rendered by an employee on his assigned rest day or days filling an assignment which is required to be worked or paid eight (8) hours on such day will be paid for at the overtime rate with a minimum of eight (8) hours at time and one-half at the rate of the position occupied or his regular rate, whichever is higher."

"RULE 55. PRESERVATION OF RATES.

Employees temporarily assigned or permanently assigned to higher rated positions shall receive the higher rates while occupying the said position; employees temporarily assigned to lower rated positions shall not have their rates reduced."

In support of its position that these quoted rules require that Claimants be paid at their higher rates when performing overtime work on lower-rated positions, the Organization argues that the host of awards it cites hold, almost without interruption, that an employee is entitled to his own higher rate of pay when called to perform overtime work on lower-rated positions and that the occasional award departing from this consistent application involved unique circumstances, i.e., clerks volunteering to work as freight handlers during wartime, a special written local agreement modifying the rule, etc.

The Carrier argues this is one of those special cases, that Claimants volunteered for the overtime, could have either accepted or rejected it, that the Organization concurred in a local understanding on how such overtime was to be assigned at Schiller Park, that a

similar claim in 1959 was withdrawn, and that Claimants were really working under Rule 17 (Short Vacancy Rule) and thus were required to take all of the characteristics, including the rate of pay, of the position filled.

Recent awards of this Division have rejected the volunteer theory, when standing alone, in the application of the Preservation of Rates Rule (Awards 19362 (Devine), 20057 (Bergman), and 20820 (Edgett)). That Claimants were permitted to accept or reject overtime also is not persuasive. Under the calling arrangement in force at Schiller Park, rejection of the overtime call was valid only to a point; the junior qualified employee, the Chief Clerk, or the Assistant Chief Clerk on duty were required to accept the overtime after the roster was exhausted.

We also find defective the argument that the Organization concurred in the arrangement for calling overtime at Schiller Park. The Organization has denied such concurrence and our examination of the record fails to disclose that the arrangement was other than "company policy." Carrier has stated the arrangement was not in technical compliance with the rules but that it was the result of a local agreement with the Organization. This Board has repeatedly held that the party asserting an agreed local exception to the clear provisions of the agreement has the responsibility to so prove, and the Carrier has failed here in this respect.

We have no difficulty in the matter of similar claims withdrawn in the past (1959) and the record shows only that these claims were withdrawn. From this it is expected that conclusions are to be reached that such withdrawal is evidence of Carrier's interpretation. Withdrawal of similar claims or local settlements do not establish a binding precedent on other similar claims. See Awards 9639 (Crowther), 12942 (Wolfe), and 20041 (Sickles). Also, the language of Rule 39 of the parties' agreement clearly provides that abandoned claims shall not be considered a precedent to other similar claims.

Carrier's argument on the application of Rule 17 does not overcome the clear language of Rule 49 (g)(h). Rule 17 basically is designed to fill short vacancies at straight-time rates and, if it will not disrupt the force, permits employees to vacate regular positions to work short vacancies. Occupants of regular assignments seeking to work short vacancies under Rule 17 must request to do so and this record is devoid of any evidence that Claimants invoked Rule 17 by requesting to fill these vacancies.

Rules 49 (g)(h) and 55 clearly provide that employees working overtime on a lower-rated position shall be paid at their own higher rate. The claim will 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

The agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

C. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.

