

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22134
Docket Number CL-21983

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8311, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed and refused to allow Mr. D. J. Pengray fifty-nine (59) minutes compensation at the time and one-half rate of Position No. 48 November 24, 1975; and,

The Southern Pacific Transportation Company shall now be required to allow Mr. D. J. Pengray fifty-nine (59) minutes compensation at the overtime rate of Position No. 48.

OPINION OF BOARD: The Claimant, D. J. Pengray, was regularly assigned to Position No. 52, Train Clerk, at Bay Street, West Oakland, hours 3:00 P.M. to 11:00 P.M., with Saturday and Sunday as rest days. On November 24, 1975, the Claimant fulfilled his regular assignment 3:00 P.M. to 11:00 P.M. On this same date a vacancy existed on Position No. 48, Train Clerk, hours 11:59 P.M. to 7:59 A.M. There were no qualified guaranteed extra board employees available to fill the vacancy, and an attempt to fill the vacancy on a volunteer overtime basis was not successful. The Claimant was then called and required to fill the overtime vacancy in accordance with Item 3 of Letter Agreement dated March 11, 1971. The Claimant was paid eight hours at the overtime rate of Position No. 48. The claim in the instant case is for fifty-nine minutes' overtime for November 24, 1975, which represents the period of time between the ending of the Claimant's regular assignment and the starting time of the overtime vacancy.

Rule 21 states in pertinent part:

"(b) An employee who has completed his regular tour of duty and has been released, and who is required to return for further service within less than one (1) hour following such release, shall be compensated as if on continuous duty."

The Carrier contends in its Submission that its records show that employees working two shifts with an interval of less than one hour between shifts have never been paid for the time between shifts under Rule 21(b). No evidence was introduced at any time to support this assertion, and as such it cannot be considered a valid defense for the Carrier. The Carrier contends that Rule 21(b) would be involved only if an employee were used on a call basis, i. e., for further service attached to his own assignment, but not for a call to fill a completely separate vacancy on an overtime basis such as the instant case. We find no such restriction in Rule 21(b) or the entirety of Rule 21 and the March 11, 1971 Letter Agreement. We find that the language of Rule 21(b) is clear and precise. The rule does not qualify the language "who is required to return for further service," and for this Board to do so would be to add language to the rule which the parties did not choose to do. We shall sustain this 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: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1978.