

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22805
Docket Number CL-22485

Kay McMurray, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8539)
that:

1. Carrier violated the Agreement between the parties when it failed and refused to allow telegrapher/clerk, D. W. DuBois, an additional day's pay for the work week of April 11 through 17, 1977.

2. Carrier shall now be required to compensate telegrapher/clerk, D. W. DuBois, an additional day's pay at the guaranteed rate of the Rotating Extra Board position which he occupied for the week of April 11 through 17, 1977.

OPINION OF BOARD: Claimant, Darrel DuBois, was regularly assigned to the Rotating Extra Board No. 13 at Thayer, Missouri.

At issue is an interpretation of the guarantee provisions of the Rotating Extra Board Agreement. That agreement reads in pertinent part:

"(h) - Incumbents of assigned extra board positions will be paid a minimum of five days for each work week, Monday through Sunday, and rest days need not be consecutive. If the employee performs service on less than five days during his work week, he will be paid for the days on which no work is available at the pro rata rate of pay of \$25.68 per day, subject to future wage- adjustments. Such guarantee will be reduced by \$25.68 per day for any day on which employee does not work by reason of his failure to respond to call."

During the week in question, claimant worked two days at pro rata rate and one day at time and one half rate. In accordance with his understanding of the guarantee, he claimed two days' pay since the contract provided five days' minimum. The carrier paid him for one day and a half or twelve hours which takes into account the overtime pay and amounts to forty hours pay for the week. In their view, forty hours of pay meets the guarantee requirement. In so doing, they rely upon the decision in

Public Law Board 405. This Board views that decision as not applicable to this case. The issue was quite different. In that case, the claimant had actually worked five days, not three as in this case. He was paid for five days and one of the days was paid at overtime rates. Since all five days were not paid at pro rata rates, he claimed an additional day at that rate. In the decision, reference was made to the fact that claimant worked 40 hours during the week -- four eight-hour periods and one period at time and one half rate. The decision stated that the claimant was paid the minimum of five days during the week and the rule was satisfied. We agree in those circumstances. The decision did not treat with the application of overtime. In fact, it ignored it. Further, it does not comment on the application of the rule when no service is performed.

The language of the rule is simple and straightforward. It says that when an employee works less than five days in a week he will be paid for the days on which no work is available at the pro rata rate. There is no reference to overtime or an hourly application. Under the rule claimant was entitled to pro rata pay for the two days he was available but not used. He has received pay for 1 and 1/2 days.

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

That the Agreement was violated.

A W A R D

Claimant will receive pay for four (4) hours or 1/2 day's pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauloz
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.

