

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22807
Docket Number CL-22487

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-8541)
that:

1. Carrier violated the Agreement between the parties when it failed and refused to allow clerical employee, J. E. Brown, an additional day's pay at the rate of her regular assigned position for May 20, 1977, after it had required claimant to work a position subject to the Hours of Service Law, thus, prohibiting her from protecting her regular assignment on May 20, 1977.

2. Carrier shall now be required to allow J. E. Brown the compensation she would have received for her regular assignment on May 20, 1977, which was a day's pay at the rate of her regular assigned car clerk position No. 76 in the Springfield Terminal at Springfield, Missouri.

OPINION OF BOARD: Claimant was regularly assigned as a car clerk in the terminal at Springfield, Missouri. Her regular hours were 3:59 PM to 11:59 PM. On the date in question she was called by the carrier to fill a telegrapher position starting at 7:00 AM. Having fulfilled that assignment, she was constrained by the Hours of Service law from working her normal shift on the same day. The claim is for pay for the normal shift she was unable to work.

The carrier states that claimant was offered the assignment in line with her seniority and accepted the offer without question. The Organization does not rebut this position except for a brief speculation that she might have subjected herself to discipline if she had refused. There is no probative evidence in the record to indicate that the claimant was assigned contrary to her desires. The Organization does not point to any rule which would be violated by acceptance of an assignment under such conditions.

The record reveals that claimant was paid the overtime rate in the position of telegrapher. She worked four days at her regular position and one day at the overtime rate during the five-day week. The net result in terms of compensation was 5-1/2 days pay for the five-day week.

The Organization cites several previous awards of the Board which granted similar claims. The majority dealt only with the problem of keeping the employe whole with respect to compensation. There is no such problem in the case at bar.

This Board finds that acceptance of the assignment was voluntary. The agreement was not violated and the claimant had a net gain in compensation.

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 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 1980.

