

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23223  
Docket Number CL-23142

Arnold Ordman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8885)  
that:

(a) The Carrier violated the Clerks' Agreement particularly Rule 39½ paragraph 2 and others when it failed and refused to properly compensate Carol L. Bolling for February 16, 1976, a holiday.

(b) That Carol L. Bolling be compensated \$2.58 for February 16, 1976, the difference for rate between Interchange and Record Clerk (\$48.57) and Mail Clerk (\$45.99).

OPINION OF BOARD: Inasmuch as no prior awards have been cited relative to the instant case, it appears that we have before us a case of first impression. We are called upon to interpret the meaning and intent of a portion of Rule 39½(a)2. of the Agreement which reads, in pertinent part, as follows:

"... If the holiday falls on a day other than a day on which he otherwise would have worked, he shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him prior to the holiday."

The facts are undisputed. The parties are in agreement that Claimant, an "other than regularly assigned employee," qualified for and was paid "holiday pay" for the legal holiday which fell on February 16, 1976. The dispute to be resolved is the amount of compensation due Claimant as "holiday pay" for February 16, 1976.

Claimant was called on February 12, 1976 to fill Mail Clerk Position A-64 which position carries a rate of \$45.99 per day. During the course of Claimant's employment that date, Carrier called upon Claimant to suspend work on the Mail Clerk Position and assist another employee on the position of Interchange and Record Clerk which position pays a higher rate, \$48.57 per day.

Because of Agreement rules, Claimant received the higher rate, i.e. \$48.57, for the entire tour of duty on February 12, 1976. It is that rate which Claimant seeks as "holiday pay" for February 16, 1976, the first day ~~she~~ worked after February 12, 1976. Carrier basically argues that the additional \$2.58 paid to Claimant for assisting on work of the higher rated position on February 12, 1976 was not part of the rate of pay, but a penalty. We hold that it was not a penalty in the sense that overtime, or punitive pay, is a penalty, and we must look to the Agreement for guidance.

Rule 37--Absorbing Overtime has a note which reads, in pertinent part:

"... An employee assisting another employee on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing rules which provide for payment of the highest rate for entire tour of duty will continue in effect...." (Underscoring added)

The "existing rule" in this Agreement, which provided payment at the higher rate for the Claimant's entire tour of duty on February 12, 1976, is Rule 45--Preservation of Rates which reads, in pertinent part:

"(a) Employees temporarily or permanently assigned to higher rated positions for a full day or less shall receive the higher rates for the full day. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time involved, whether the regular occupant of a position is absent or whether the temporary assignee covers the position irrespective of the presence of the regular employee...." (Underscoring added)

From the record it appears that Claimant was paid, on February 12, 1976, because she performed work of the higher rated Interchange and Record Clerk Position. The Interchange and Record Clerk Position is thus "the position on which compensation last accrued--prior to the holiday" and we will sustain the 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. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.