

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24927

Docket Number CL-24004

Josef P. Sirefman, Referee

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

PARTIES TO DISPUTE:

(

(Union Pacific Railroad Company (Western Districts)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9416) that:

1. The Carrier violated the controlling agreements between the Brotherhood of Railway, Airline and Steamship Clerks and the Union Pacific Railroad Company when, commencing July 20, 1979, Clerk R. M. Saulsberry was forced to vacate his regularly assigned position of Relief Towerman and instructed to work the position of 10:00pm Towerman seven days per week.

Clerk Saulsberry's regular assignment of Relief Towerman works as follows:

Saturday	6:00am	to	2:00pm
Sunday	6:00am	to	2:00pm
Monday	2:00pm	to	10:00pm
Tuesday	2:00pm	to	10:00pm
Wednesday		Rest Day	
Thursday	10:00pm	to	6:00am
Friday		Rest Day	

2. Clerk Saulsberry was forced to suspend work during his regularly assigned hours on Saturday, Sundays, Mondays and Tuesdays and to work on his regularly assigned days of rest on Wednesdays and Fridays. Clerk Saulsberry was compensated at the time and one-half rate of pay for service performed on his rest days; claim in this dispute is for time and one-half for service performed outside his regularly assigned hours.

OPINION OF BOARD: Clerk R. M. Saulsberry, the Claimant herein, had the regular position of Relief Towerman. His regularly assigned hours were 6 AM to 2 PM Saturday and Sunday; 2 PM to 10 PM Monday and Tuesday; a rest day on Wednesday; 10 PM to 6 AM on Thursday; with a rest day on Friday. Commencing Monday, July 16, 1979, the Telegrapher-Towerman working at Hobart Tower on the 10 PM to 6 AM shift was transferred, and Claimant was assigned temporarily to fill in for that position. He did so continuously through August 7, 1979 performing the Telegrapher-Towerman duties on the 10 PM to 6 AM shift without any rest days. The Agent-Telegrapher-Towerman on the 6 AM to 2 PM shift (rest days Saturday and Sunday), and another Telegrapher-Towerman on the 2 PM to 10 PM shift (rest days Monday and Tuesday) were also assigned to work their regular shift on rest days during this period to accomodate Claimant's continuous duties on the 10 PM to 6 AM shift during the period in question.

Under Rule 12 D the Carrier has the right to move employees from one job to another within the same shift, subject to the various steps set forth in that provision. Here, however, the Board is dealing with movement of an employee from one shift to another shift. The research memorandum together with attachments thereto (Employer's Exhibit G) establish the practice on the property of paying the punitive overtime rate for service outside the hours of a regular assignment. Carrier asserts that this practice does not apply in this instance because of Third Division Awards 21639, 22410, and 21411. The Board is not persuaded that these Awards are apposite. Awards 21639 and 22410 deal with assignments and rearrangements among positions having the same hours and shifts. Award 21411 appears to suggest that movement between shifts can take place without the incurring of any penalty rate of pay. However, this Award concerned another Carrier and cannot, in our opinion, overcome the sustained practice of this Carrier paying overtime under such circumstances.

Accordingly Claimant was entitled to time and a half for hours worked on July 16, 17, 21, 22, 23, 24, 28, 29, 30 and 31, and on August 4, 5, 6, 7, all in 1979; these being Saturdays, Sundays, Mondays, and Tuesdays, during this period when Claimant was assigned to work hours other than the hours of his regular assignment. Claimant has already been paid at the overtime rate for work on Wednesdays and Fridays (his regular rest days), and the 10 PM to 6 AM shift has always been his regularly assigned hours for Thursdays.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.