

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25382
Docket Number CL-24516

W. S. Coleman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9563)
that:

(1) Carrier violated the terms of the Agreement in effect between the Parties when, on November 18, 1979, it diverted Mr. G. L. Snoots from his regular assignment of Operator-Clerk position C-316 (3:00 PM to 11:00 PM, UN Office, Brunswick, Maryland, to Block-Operator Handling Switches position C-312 (3:00 PM to 11:00 PM), WB Tower, Brunswick, Maryland, and it failed to compensate him in accordance with Agreement rules, and

(2) Carrier shall compensate Claimant G. L. Snoots an additional eight (8) hours' pay at pro rata rate (\$68.92), representing the difference in the compensation received and the proper compensation due for such diversion by Carrier on November 18, 1979.

OPINION OF BOARD: Claimant G. L. Snoots is the regularly assigned Operator-Clerk on the 3:00 P.M. to 11:00 P.M. shift at UN Office, Brunswick, Maryland. On November 18, 1979, Claimant was diverted from his position to fill the position of Block-Operator at the WB Tower. Organization contends that Claimant was diverted from his regularly assigned position to another job in violation of the Agreement. Organization asks that Claimant be reimbursed an additional eight hours' pay at the pro rata rate for the diversion. Organization relies on Rule 24 of the Agreement for its support, just as the Carrier does for support of its case. The Note to Rule 24 reads in pertinent part as follows:

"NOTE: (a) The parties agree that an employee may be held off or removed from his assigned position to work a vacancy under emergency conditions when such vacancy cannot be filled in any other manner. The involved employee is entitled to his regular rate, or the rate of the vacancy, whichever is higher, with a minimum of eight (8) hours, and penalty rate for all hours worked outside of his regularly assigned hours.

(b) An employee held off or removed from his regular position and required to fill a vacancy other than as outlined in the first sentence of paragraph (a) of this note is entitled to a minimum of eight (8) hours' pay at pro rata rate for each position."

The issue here is whether what took place constitutes an emergency, as contemplated under Note (a), or whether Note (b) controls in this situation. Carrier contends that Claimant was the only qualified man available who could cover the WB Tower position and that position had to be covered. We see nothing in this record to persuade us otherwise. Note (a) is controlling in this instance and the claim should be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.

LABOR MEMBER'S DISSENT TO
AWARD 25382 , DOCKET CL-24516
(REFEREE W. S. COLEMAN)

The majority has erred in this instance. The record presented before this tribunal clearly indicates that no emergency situation existed when the Claimant was required to fill a vacancy under other than emergency conditions. Therefore, he is entitled to eight (8) hours compensation at the pro rata rate for his regular assignment from which diverted and an additional eight (8) hours at the same rate for the position worked, in accordance with Rule 24, Note (b).

Award 25382 is in error and is contrary to Awards 22271 and 23215 involving the same parties.


William R. Miller, Labor Member

Date April 23, 1985