

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30483
Docket No. CL-30330
94-3-92-3-101

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Transportation-Communications
(International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10659) that:

CLAIM #1

a) The Carrier violated Rule 12 of the Clerks' Agreement on April 5, 6, 7, 8, 9, 11, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1988 when Extra Clerk Denise Henry, Position 4GBX082, rate \$98.96 per day, was assigned to Automotive Marketing and augmented the regular work force by doing work that is assigned to L. G. DeLosh, Position 401E002, rate \$2,831.52 per month. She actually did the productive work by setting up Vehicle files eight hours each date above.

b) Lee G. DeLosh should receive the punitive rate of his position for eight hours each date above for a total of \$212.37 per day for a total claim of \$3,822.66.

CLAIM #2

a) The Carrier violated the terms of the Clerical Agreement when on September 6, 7, 8 and 9, 1988 Extra Clerk D. G. Dailey was utilized to augment the regular work force in the performance of productive clerical functions normally assigned to Claim Investigators/Clerks in the Overcharge Claims Department rather than utilizing Head Claim Clerk R. J. Walton, and

b) The Carrier shall now allow Head Claim Clerk R. J. Walton eight (8) hours pay at the punitive overtime rate of his position for each date of September 6, 7, 8 and 9, 1988.

CLAIM #3

a) The Carrier violated the terms of the Clerical Agreement when on October 24, 25, 26, 27, 31, November 1, 2, 3 and 4, 1988 Extra Clerk W. G. Baldwin was utilized to augment the regular work force in the performance of productive clerical functions normally assigned to Machine Clerks in Duplicating Services rather than utilizing Machine Clerk F. A. Knell, and

b) The Carrier shall now allow Machine Clerk F. A. Knell eight (8) hours pay at the punitive overtime rate for each date of October 24, 25, 26, 27, 31, November 1, 2, 3 and 4, 1988.

CLAIM #4

a) The Carrier violated the terms of the Clerical Agreement when on October 24, 25, 26, 27, 28, 31, November 1, 2, 3 and 4, 1988 Extra Clerk J. M. Magiera was utilized to augment the regular work force in the performance of productive clerical functions normally assigned to Machine Clerks in Duplicating Services, rather than utilizing Machine Clerk E. C. Phillips, and

b) The Carrier shall now allow Machine Clerk E. C. Phillips eight (8) hours pay at the punitive overtime rate for each date of October 24, 25, 26, 27, 28, 31, November 1, 2, 3 and 4, 1988.

CLAIM #5

a) The Carrier violated the terms of the Clerical Agreement when on October 24, 25, 26, 27, 28, 31, November 1, 2, 3 and 4, 1988 Extra Clerk C. Stovall was utilized to augment the regular work force in the performance of productive clerical functions normally assigned to Machine Clerks in Duplicating Services rather than utilizing Machine Clerk S. C. Hall, and

b) The Carrier shall now allow Machine Clerk S. C. Hall eight (8) hours pay at the punitive overtime rate for each date of October 24, 25, 26, 27, 28, 31, November 1, 2, 3 and 4, 1988."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The essential facts are not disputed. On the dates specified in each of the five claims herein, Carrier assigned the named Extra Board Clerk to the duties as described. In each claim, the Extra Board Clerk was in addition to the regularly assigned work force. While in Claim #1, Carrier initially asserted the Extra Board Clerk was involved in a special project, Carrier provided no details about the project and did not reassert the contention in its final denial. That final denial encompassed all five claims and did not distinguish between them. In the other four claims, the Carrier's initial response admitted that the Extra Board Clerks performed duties similar to the positions of the Claimants.

Carrier raised several general defenses. It said the claims sought a penalty that was excessive and was not provided for by the Agreement. It also alleged that each Claimant was under pay on the claim dates and suffered no loss. Regarding the merits, Carrier alleged an absence of evidence to support the Organization's contentions of violation. Finally, Carrier made reference to certain correspondence in File C-56-Balto, dated in October of 1989, well after the instant claims arose, for a statement of its position. That correspondence has been reviewed. It deals with attempts to negotiate a voluntary separation program. One aspect of the proposals and counter-proposals described therein deals tangentially with problems associated with use of Extra Board Clerks. However, the correspondence does not constitute a negotiated agreement that affects the instant claims.

Carrier mainly defends these claims on the basis that temporary positions were established and the Extra Board Clerks were properly assigned to fill them. The terms of Rule 12 and a Letter of Agreement entitled Addendum No. 24 show Carrier's position to be untenable. These provisions prevent Carrier from using Extra Board Clerks to increase, or augment, the regular work force. Rather, their use is limited to that of providing a relief role during the absence of the regularly assigned employee. Rule 12, Section 6(a) provides as follows:

"All short and temporary vacancies of less than thirty (30) calendar days' duration, including bulletined positions pending assignment, vacancies occasioned by vacations, sick leave, serving on juries, and personal leave, will be filled by the assignment of extra board employees. Extra board employees will only be used for the purpose set forth in this Section but will not be utilized to augment the regular work force."

(underlining supplied)

The operation of this prohibition on augmentation of the regular work force is reinforced by Addendum No. 24. It explicitly permits augmentation of the work force only under certain specified conditions and then only during the months of January and February each year. None of the instant Claims arose during those months. Therefore, the Carrier's actions are found to be in violation of the Agreement.

On the question of remedy, the Carrier asserts that no Claimant suffered a loss. Here, again, Carrier's position must be rejected. Public Law Board No. 3540, Case 41 involved these same parties under similar circumstances. An improper augmentation of the work force was determined in that Award and the time claimed at punitive rates was sustained. We see no reason here to depart from that remedy. The work performed by the Extra Board Clerks ordinarily would have accrued to the regularly assigned work force as overtime opportunities. As such, the disputed work constitutes identifiable as well as quantifiable lost overtime earnings. Under such circumstances, providing compensation is not a penalty. It is the compensation flowing directly from a cognizable loss. Accordingly, the Claims will be sustained.

AWARD

Claims sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.