

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30664
Docket No. CL-30862
95-3-92-3-752

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

PARTIES TO DISPUTE: (Transportation Communications International
(Union
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(Chicago, Central and Pacific Railroad
(Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10870) that:

1. Carrier violated the Clerks' Agreement on Saturday, November 16, 1991, when it failed to properly compensate an employee for service rendered on his assigned rest day.
2. Carrier shall now compensate Clerk A. C. Gloechner, East Cabin, Illinois, an additional three (3) hours and forty-five (45) minutes at the time and one-half rate of pay attached to the Transportation Assistant Position, for service rendered on the claimed date, a difference of \$88.20."

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.

This dispute concerns Claimant's service covering a short vacancy on the Transportation Assistant (T/A) position which, under Appendix 1 of the Agreement, has an "A" designation. "A" designated positions are exempt from Rules 6, 7, 8, 9, 11, 16, 18 and 25. The Parties cited Agreement Rule 11 (Overtime) and Rule 22 (Service Outside Regular Assignment) pertinent to this dispute.

Claimant holds a regular assignment at East Cabin, Illinois, with Saturday assigned as one of his rest days. On Saturday, November 16, 1991, a short vacancy existed on the (T/A) position at Dubuque, Iowa, which Claimant was called to fill. Claimant worked a total of eleven (11) hours and forty-five (45) minutes on the 16th, however, Carrier compensated him for only eight of those hours.

The Organization premised its argument on the "clear, unambiguous language of Rule 11, Paragraphs (a) and (b) which state that: "An employee is entitled to receive the time and one-half rate for service on the sixth day, and for time in excess of eight (8) hours." In its denial, Carrier argued that Claimant was "not entitled" to receive overtime pay while working on a (T/A) position. Carrier maintained that Claimant was "cognizant" that he was working a position with an "A" designation, thereby rendering him "exempt from Rule 11." Carrier went on to assert that: "Claimant was compensated at the higher rate of pay (125.44), and cannot simply accept the higher daily rate of pay and not accept the conditions which go hand-in-hand with the higher rate."

Appendix 1 of the Agreement clearly specifies that those positions which are categorized as "A" positions are exempt from Rules 6, 7, 8, 9, 11, 16, 18 and 25 of the Agreement. While Rule 11 does provide for overtime pay after eight hours, the position which Claimant worked on November 16, 1991, is exempt from that Rule. However, the Transportation Assistant's position is not exempt from Rule 22 which clearly states that: "Employees who relieve an employee on their assigned rest day shall be paid for at the rate of the position occupied or their regular rate, whichever is higher, with a minimum of eight hours at the rate of time and one-half." Rule 22 speaks to the issue of "premium pay" as opposed to "overtime" addressed in Rule 11. There is a clear distinction between the two, and Rule 22 governs this case. Carrier shall compensate Claimant in accordance with Rule 22 for the service he provided on Saturday, November 16, 1991.

AWARD

Claim sustained.

O R D E R

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 31st day of January 1995.