

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31609
Docket No. CL-31073
96-3-93-3-16**

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

(Transportation Communications International
(Union

PARTIES TO DISPUTE: (

(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10914) that:

**I. The following claim is hereby presented to the Company in behalf
of Claimant D. Rabideau. (861-92DH014)**

- (a) The Carrier violated the Clerks' Rules Agreement effective
September 24, 1990, particularly Rule 5 and other rules, when it
failed to compensate Claimant Rabideau at the overtime rate of pay
for February 7, 1992, when she covered Customer Service Clerk
position tour of duty 3:00 P.M. to 11:00 P.M., which was her second
tour of duty in a twenty-four hour period.**
- (b) Claimant Rabideau worked 6:00 P.M. to 2:00 A.M. tour on
February 7, 1992 and then worked 3:00 P.M. to 11:00 P.M. on
February 7, 1992.**
- © Claimant Rabideau now be allowed eight (8) hours punitive pay
based on the pro-rata hourly rate of \$13.64 for February 7, 1992
less the straight time pay the Carrier has already allowed her, on
account of this violation.**
- (d) This claim has been presented in accordance with Rule 28-2 and
should be allowed.**

II. Claim of the System Committee of the TCU that:

The following claim is hereby presented to the Company in behalf of Claimant D. Rabideau. (861-92DH015)

- (a) The Carrier violated the Clerks' Agreement effective September 26, 1990, particularly Rule 5 and other rules, when it failed to compensate Claimant Rabideau at the overtime rate of pay for February 25, 1992, when the Claimant covered position Customer Service Clerk, 8:00 A.M. tour of duty, location CATS Department, Clifton Park, NY, which was Claimant's second tour of duty in a twenty-four hour period.
- (b) Claimant worked 3:00 P.M. tour on February 24, 1992 and then worked 8:00 A.M. tour on February 25, 1992, which was a 2nd tour of duty in a twenty-four hour period.
- © Claimant Rabideau should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.64 per hour for February 25, 1992, less any straight time pay that the Carrier has allowed for the involved second tour account of this violation.
- (d) This claim has been presented in accordance with Rule 28-2 and should be allowed.

III. Claim of the System Committee of the TCU that:

The following claim is hereby presented to the Company in behalf of Claimant P. Berg. (861-92DH017)

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rule 5 and other rules, when it failed to compensate Claimant Berg at the overtime rate of pay for March 2, 1992, when the covered position Train Clerk, symbol #6, tour of duty 7:00 A.M. to 3:00 P.M., which was his second tour of duty in twenty-four hour period.

- (b) Claimant worked 11:00 P.M. to 7:00 A.M. tour on March 1, 1992 and then worked 7:00 A.M. to 3:00 P.M. on March 2, 1992.
- © Claimant Berg now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.64 for March 2, 1992, less the straight time pay the Carrier has already allowed, on account of this violation.
- (d) This claim has been presented in accordance with Rule 28-2 and should be allowed."

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.

Each of the issues in this dispute centers on Claimants having worked two eight hour tours in a 24 hour period. On February 6, 1992 Claimant Rabideau worked the 6:00 P.M. to 2:00 A.M. tour of duty. Ms. Rabideau then worked a second tour of duty, 3:00 P.M. to 11:00 P.M., on February 7, 1992. On February 24, Claimant Rabideau worked the 3:00 P.M. to 11:00 PM tour, and then worked the 8:00 A.M. tour on February 25, 1992. Claimant Berg worked the 11:00 P.M. to 7:00 A.M. tour on March 1, and then worked 7:00 A.M. to 3:00 P.M. on March 2, 1992. Claimants were compensated at the pro rata rate for each of the aforementioned tours.

Citing Rules 4 and 5 of the Agreement, the Organization submitted a claim on behalf of Claimants Berg and Rabideau, asserting that each should have been compensated at the overtime rate for performing two tours of duty in a 24 hour period. With respect to Rule 4, the Organization submitted that Claimants were "unassigned" and that their workweek was "defined" by Rule 4.

Carrier denied the claim, maintaining that "Spare clerks are entitled to work at straight time rate on each calendar day, not once in a 24-hour period." The Organization responded to Carrier's denial, speaking to the "overwhelming weight of authority rendered in various Awards, supporting Organization's position that a day commences with the time of the preceding work assignment." In its final declination, Carrier reiterated that: "If work is performed on two (2) separate calendar days, regardless of the time frame between those two shifts, there is no provision for the payment of overtime."

Rule 4 of the Agreement states, in pertinent part: "... A work week of 40 hours, consisting of five days, of eight hours each...." A "day" must be interpreted as the 24-hour period computed from the starting point of the previous assignment. See Public Law Board No. 2263, Award 48 and precedent cited therein. There is no dispute that Claimants worked two tours of duty within the same 24 hour period. Therefore, they are entitled to be compensated for the monetary difference between the pro rata rate which they received, and the overtime rate to which each Claimant is entitled.

AWARD

Claim 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 29th day of August 1996.