

PUBLIC LAW BOARD 3483

Award No. 2
Case No. 5

PARTIES
TO
DISPUTE

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Southern Pacific Transportation Company (Eastern Lines)

STATEMENT
OF CLAIM

- "(1) Carrier violated the rules of the current agreement including but not limited to Section 7 of the Addendum 6 at Lafayette, Louisiana, when on October 20, 1982, it failed to call and use Mr. R. Hebert in line with his request for the overtime vacancy on Assistant Chief Yard Clerk Position No. 8.
- (2) Carrier shall now be required to pay Mr. R. Hebert eight (8) hours' pay at the time and one-half rate of Assistant Chief Yard Clerk Position No. 8 for October 20, 1982."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that on October 20, 1982, a vacancy existed on Assistant Chief Yard Clerk Position No. 8 which scheduled work from 11:59 P.M. to 7:59 A.M. The extraboard was exhausted for that particular vacancy and claimant was not called to fill that vacancy in accordance with the rules. Mr. Hebert had filed proper written application to be called for overtime on that position and was available and qualified and would have responded to the call, according to Petitioner. Since he was not called, the claim herein was progressed.

Section 7 of Addendum 6 provides that under circumstances such as that herein the senior qualified regular employee who has expressed in writing his desire

to work the position on an overtime basis will be used and paid the time and one-half rate. Furthermore, the note under that section provides, in addition, that "However, if it is found that Carrier could have filled the vacancy under Section 7, and failed and/or neglected to call employees referred to in Section 7, then the Carrier will pay the employee removed from his assignment eight hours' pay at the straight-time rate of his regular assignment, or eight hours' straight-time pay at his protective rate...." There is no question about the facts in this particular dispute. Carrier admits that the clerk responsible for calling the extraboard mistakenly applied the rules in filling the vacancy. The dispute however apparently is the Petitioner's insistence on payment for eight hours at time and one-half and Carrier's insistence that eight hours at straight-time rate is the appropriate remedy. That issue may be resolved based on similar disputes which have frequently occurred throughout the industry and, in particular, on this property. Under Awards 14, 17, 9 and 38 of Public Law Board No. 1812 involving the same parties, the Board found that compensation under circumstances similar to that herein shall be at the pro rata rate only for the time not worked. It is this Board's view, based on that precedent as well as on industry practice, that compensation for time not worked should be at the straight-time rate. Thus, the Board in this instance will then agree that the claim should be sustained only to the extent of straight-time pay for work not performed, rather than punitive pay as Petitioner requests.

AWARD

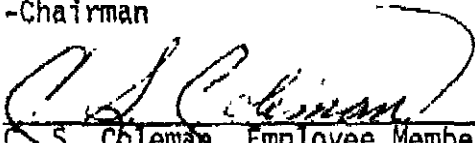
Claim sustained in part; claimant will be paid for time lost on the position in question at the pro rata straight-time rate only.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


H. A. Silver, Carrier Member


C. S. Coleman, Employee Member

Houston, Texas

September 28, 1986

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