

Award Number 286
Docket Number CL-309

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
BOSTON AND MAIN RAILROAD**

DISPUTE.—

"Claim for pay at time and one half rate for overtime worked on September 3, 1935, on the part of the following freight house clerks employed at East Cambridge, Massachusetts:

	Time worked	Basic rate	Amount of claim
M. J. Sullivan #1.....	4:40-6:00 1H. 20M.	\$5.24	\$1.24
J. Barron.....	5:00-6:00 1H.	5.24	.93
J. J. Meagher.....	5:00-5:30 30M.	5.24	.46
Pat Mahoney.....	5:00-6:00 1H.	5.24	.93
M. McDonough.....	5:00-6:00 1H.	5.24	.93
M. Crowe.....	5:00-6:00 1H.	5.24	.93
F. Riley.....	5:30-6:00 30M.	5.24	.46
H. McFarland.....	3:00-4:30 1H. 30M.	5.24	1.39
John O'Brien.....	5:00-6:15 1H. 15M.	5.24	1.16
T. Rafferty.....	5:00-5:45 45M.	5.24	.69
C. Mahoney.....	5:00-5:30 30M.	5.24	.46
J. J. Walsh.....	6:00-6:15 15M.	5.75	.27
L. B. Gilson.....	5:30-6:00 30M.	5.75	.54
Total.....			\$10.39

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

The carrier and the employes involved in this dispute are, respectively, carrier and employes 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.

The parties to said dispute were given due notice of hearing thereon.

The case being deadlocked, Willard E. Hotchkiss was called in as Referee to sit with this Division as a member thereof.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"On August 31 and September 3, 1935, there were employed at East Cambridge freight houses approximately 93 house clerks. None of these employes were required to work on the holiday September 2, 1935, but the thirteen employes shown under 'Statement of Claim' were required to work overtime on the night of August 31, 1935, and again on the night of September 3, 1935, without compensation. In addition to these thirteen employes, there were eight additional employes who were required to work overtime on the night of August 31, 1935 (only) without compensation, and six others who were required to work overtime on the night of September 3, 1935 (only) without compensation."

There is in evidence an agreement between the parties bearing effective date of July 15, 1925, and the petitioner cites Rules 57 and 62 thereof in support of claim, reading:

RULE 57

"*Overtime*.—Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period on any day, will be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"The provisions of this rule will not apply where employes alternate between shifts for their own convenience or due to seniority changes.

"The provisions of this rule will not apply to spare employees who may cover all or a part of two assignments in a 24-hour period."

RULE 62

"*Holiday Work*: Except in the case of employes enumerated in Section 3 of Rule 1, work performed on the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday) shall be paid at the rate of time and one-half.

"Employes enumerated in Sections 1 and 2 of Rule 1 shall be paid for holidays not worked and in such cases only such employes as the absolutely necessary to take care of current business will be required to work holidays, and then they will take their turn in so doing.

"Employes who are paid for holidays when not worked will not be paid anything extra when required to work or be allowed any equivalent time off.

"Employes who have holidays off with pay, agree to waive necessary overtime on the day before or following the holiday, or on any other day when such overtime is occasioned by the holiday except when such overtime amounts to more than the time paid for and not worked on account of the holiday."

The petitioner contends that the use of the word "or" as it appears in two places in the last paragraph of Rule 62 was intended to and does prohibit working the employes involved in this dispute on more than one occasion account of the same holiday without paying them overtime; that such employes may be worked overtime without pay in the following manner when such overtime is occasioned by their being off on the holiday with pay:

- (a) On the day before the holiday, *or*,
- (b) On the day following the holiday, *or*,
- (c) On any other day.

The petitioner also contends that the overtime worked by these employes the night of September 3rd was not occasioned by the holiday, but was due to late arrival of 52 tons of freight, received as the result of the new pick-up and delivery system instituted by the carrier, which service was not in effect when the rule in question was negotiated; and, that the thirteen employes involved in this dispute met the requirements of the provisions of the rule when they worked overtime on the night of August 31, 1935, as ordered by the carrier, without compensation.

Petitioner further contends that the subsequent overtime these employes were required to work on the night of September 3, 1935, as hereinbefore set forth in the claim, comes within the provisions of Rule 57, and that the employes in question should be compensated accordingly.

Carrier contends that, under the provisions of Rule 62, these employes could have been worked, without payment for overtime, on the day before and/or following the holiday, and/or on any other day when such overtime is occasioned by the holiday and that Rule 57 is not applicable.

The provision of the rule under which this case arises reads:

"Employes who have holidays off with pay, agree to waive necessary overtime on the day before or following the holiday, or on any other day

when such overtime is occasioned by the holiday except when such overtime amounts to more than the time paid for and not worked on account of the holiday."

The issue in this case is whether the word "or" as used in the above paragraph is the equivalent of "and/or".

Considering the common use of the word "or" in combinations similar to the one here involved, there is obvious ambiguity in the rule which could have been avoided by the use of the double conjunction "and/or" or by saying that employes under the circumstances stipulated could be required "to work on the day preceding a holiday or on the day following a holiday, or on both days."

The phrase "or on any other day", as the Referee views the case, materially increases the presumption that the word "or" was not intended to carry the meaning of "and/or." The effect of permitting the carrier to require employes to work overtime without pay the day before a holiday, the day after a holiday, and any other day that carrier may choose, would be to leave the agreement in an exceedingly loose condition. The Referee cannot believe that this was the intention of the parties when they entered into the agreement. The Referee finds, therefore, that the word "or" as used in this paragraph of Rule 62 means "or" and not "and/or".

AWARD

Claim is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 13th day of August 1936.