

Award No. 687
Docket No. CL-651

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES.**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY (FRANK O. LOWDEN, JAMES E. GORMAN,
JOSEPH B. FLEMING, TRUSTEES).**

STATEMENT OF CLAIM: "Claim of C. W. Anderson, extra ticket clerk, rate \$154.50 per month prior to August 1st, 1937, Englewood Passenger Station, 63rd Street, Chicago, Ill., for pay at rate of time and one-half the pro rata rate for all time required to work on Saturdays between the hours of 8:00 A. M. and 5:00 P. M. after completing his tour of duty on Friday at 10:00 P. M. and all time required to work on Sundays between the hours of 7:15 A. M. and 4:15 P. M. after completing his tour on Saturday at 5:00 P. M. from September 24th, 1936."

EMPLOYES' STATEMENT OF FACTS: "Mr. C. W. Anderson, extra ticket clerk, rate \$154.50 per month (old rate prior to August 1st, 1937), Englewood Passenger Station, 63rd Street, Chicago, Ill., was assigned by bulletin, effective September 24th, 1936, to work as follows:

Thursday		Day off.
Friday		1:00 P.M. to 10:00 P.M.
Saturday		8:00 A.M. to 5:00 P.M.
Sunday		7:15 A.M. to 4:15 P.M.
Monday		8:00 A.M. to 5:00 P.M.
Tuesday		4:00 P.M. to 1:00 A.M.
Wednesday		10:45 P.M. to 7:45 A.M.

Mr. Anderson has worked these assigned hours (except with a slight change during vacation period of other clerks in the office) since September 24th, 1936, and has been paid pro rata rate for each 8-hour tour of duty."

CARRIER'S STATEMENT OF FACTS: "The ticket office in the Englewood passenger station located at 63rd Street in Chicago is joint with the New York Central, Pennsylvania, Nickel Plate and Rock Island. The positions in question are manned by clerical employees holding seniority on the Rock Island. The service requires that the ticket office be open for business seven days per week. Five regularly assigned ticket clerk positions are maintained in this office, filled by Rock Island employees who secured such positions on the basis of their seniority rights on the Chicago Division seniority district, indicated as Seniority District No. 6 under Rule 5 in the current clerical agreement.

"The first ticket clerk position is assigned to work from 7:15 A. M. to 4:15 P. M., daily except Sunday, Sunday being the rest day, with one hour

"The employes have also referred to Rule 54, which rule provides the method of payment of employes working a full day period on Sundays and holidays within the limits of the regular week-day assignment, and say that because Mr. Anderson relieves the first ticket clerk on Sundays from 7:15 A. M. to 4:15 P. M. and does not work the same hours during the week day assignment, that the Carrier is not entitled to pay Mr. Anderson at only pro rata rate for Sunday service. It was never intended that Rule 54 be interpreted in any such manner as this when the necessities of the service require that a relief position be provided and the holder of that position works only the hours of the other regularly assigned positions.

"The principle of paying only pro rata rate on established relief assignments which work on any one day the regular tour of duty of the particular employe relieved on that day is set up in Decision No. 3784 of the United States Labor Board.

"We note the employes, in their claim to your Board, refer to 'claim of C. W. Anderson, extra ticket clerk' Mr. Anderson is not an extra ticket clerk. He is regularly assigned, the same as are the other ticket clerks in the Englewood ticket office. A regularly assigned position is a position on which the holder thereof knows exactly the time he is to start work each day of the week during each week, and the fact that such a regular assignment may not be for the same hours each day is not a violation of the schedule, and a clerk is not an 'extra' ticket clerk when he works the same hours each Monday, each Tuesday, each Wednesday, each Friday, each Saturday, and each Sunday of the week—and has each Thursday as an assigned day of rest.

"A theory of penalization to the Carrier because of its willingness to provide regular men with one day of rest in seven is not consistent with the principles of any labor contract in existence on this or any other property that we know of. Schedule agreements are negotiated with the employes and their representatives to provide reasonable rules and working conditions which can be applied without undue hardship on the employes or penalty to the carrier, and the instant claim of the employes is extremely unfair; and it was never intended that any such application be made of the rules referred to above as is now contended for by the employes. Such a claim bears no relation to a consistent and reasonable application of the Clerks' agreement, and the claim should be declined."

OPINION OF BOARD: The facts essential to a disposition of this dispute are few and simple. The record discloses that on each of two separate calendar days within a week, the carrier required the claimant to start his assignment within a space of twenty-hour hours after the starting time of his previous assignment, although in each instance the starting time was on a separate calendar day.

The petitioner contends that the carrier in making the assignments in question violated Rule 49 of the agreement between the parties which provides in part that "time in excess of eight (8) hours, exclusive of meal period, on any day, will be considered over-time and paid on the actual minute basis at the rate of time and one-half."

The disposition of this dispute, accordingly, turns upon the interpretation that is placed upon the word **day**. The petitioner insists that it means a twenty-four hour period computed from the starting time of a previous assignment. The carrier contends that the word can mean only a calendar day.

While it is admitted that the word **day** in its more technical sense does mean a calendar day beginning and ending at midnight, it is obvious that it has other less technical meanings; and its meaning in a given situation must be determined in view of the circumstances of that situation. The

Division is of the opinion that in computing a tour of duty within the meaning of Rule 49, the word should be taken to mean a period of twenty-four hours computed from the beginning of a previous assignment. If this were not so, the carrier would be able to assign extremely inconvenient hours of work.

This interpretation is supported by the letter of instructions which Mr. Reed, General Manager of the carrier, issued November, 1935. This letter, while it may not be a joint interpretation in a technical sense and while it contains some equivocal language, must be taken as an admission on the part of the carrier, strongly supporting the position of the petitioner. Mr. Reed said among other things:

"We do not want any clerks, whether regular, extra, or furloughed clerks to be required to double over on a second shift during the same twenty-four hour spread and thereby incur the penalty of paying time and one-half for the second shift."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier in the action that it took violated Rule 49 of the agreement between the parties as alleged.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of July, 1938.