

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Dozier A. DeVane, Referee

**PARTIES TO DISPUTE:**

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

**THE NEW YORK DOCK RAILWAY**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that all regularly assigned employees, as enumerated in Group 2 of the Scope Rule, be compensated a minimum of eight (8) hours, at existing rates of pay, in accordance with the provisions of Section E, paragraphs (1) and (6) of current agreement, for November 11th, 1937."

**EMPLOYEES' STATEMENT OF FACTS:** "On November 10th, 1937, all regular assigned employees were advised not to report for work the following day, Armistice Day, as it was a holiday. This resulted in practically all regular forces, as shown on Group 2 Roster, losing a day's pay."

There is in evidence an agreement between the parties bearing effective date of October 28, 1937, and the following rules thereof are quoted:

Section A—SCOPE:

"These rules shall govern the hours of service and working conditions of the following employees of New York Dock Railway subject to exceptions herein noted.

"Group (1) Clerks: Office employees who devote all or the major part of their time to writing and calculating incident to keeping records and accounts; to writing and transcribing letters, bills, reports, statements and similar work, and to the operation of telephones, office mechanical equipment and other devices requiring special skill and training in connection with such duties and work; office boys and messengers.

"Group (2) Checkers, receiving and delivery clerks, freight handlers and manual workers in and around freight houses, including truckers, tractor operators, loaders, coopers and all other employees doing similar work.

"Exceptions: These rules shall not apply to the following or similar positions nor to such other supervisory employees and their personal or confidential assistants as may be subsequently agreed upon:

Personal Stenographer, Supt. of Transportation  
General Agent  
General Bookkeeper  
Chief Clerk

made to the Memorandum of Agreement With Respect To Rates of Pay of Clerical and Freight House Employees of New York Dock Railway, signed November 9th, 1937, filed herewith as Exhibit 'J.' Under this agreement the rate of pay of freight house checkers, receiving and delivery clerks was fixed at 70¢ per hour and all other Group (2) employees at 60¢ per hour, an increase of 5¢ per hour in each division. The latter rates compared with the prevailing rates of 64¢ and 58¢ after the general increase of 5¢ per hour by the railroads. The higher rates of pay for employees of this carrier were accepted by both sides as adequate compensation under the hourly employment conditions to offset the privileges of employees of other carriers in respect of minimum pay, vacation allowances, etc."

\* \* \* \* \*

"This carrier's position with respect to Claim No. 2 is:

The representations made above with respect to the second half of Claim No. 1 apply with equal force to Claim No. 2. This claim is for pay for time not worked. Under its practices and under the present rules the carrier is under no obligation to pay any Group (2) employees for time not worked or to open its freight houses for the purpose of providing work for them when business conditions do not warrant."

**OPINION OF BOARD:** This claim is for eight hours' pay for all regularly assigned Group (2) employees of carrier who were notified on November 10, 1937, that the warehouses would be closed and there would be no work the following day, November 11, Armistice Day, and who were not worked or paid for that day.

Carrier contends that these Group (2) hourly rated employees are not regularly assigned employees and are entitled to pay only for hours actually worked. The Board has disposed of this contention adversely to the Carrier in Award 794, Docket CL-778, and what is said there is equally applicable here. The Opinion in Docket CL-778 also makes it unnecessary to consider again other defenses which were urged by the carrier in both cases and also disposed of adversely to it in that case.

Armistice Day is not one of the holidays enumerated in Section E, Paragraph (5), or referred to in Paragraph (6) of the same Section. This latter paragraph provides that the working days per week for regularly assigned employees shall not be reduced below six unless mutually agreed to by the Management and the duly accredited representatives of the employees, except that this number may be reduced in a week in which holidays occur by the number of such holidays. No mutual agreement is shown or claimed, and as Armistice Day is not one of the holidays enumerated in Section E (5), the action of the carrier constituted a violation of the Agreement (See Award 783).

The claim is limited to only such regularly assigned Group (2) employees as would have worked on that day but for the lay-off, and the Opinion is applicable only to such employees.

**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 violated the current agreement, as contended by the petitioner.

**AWARD**

Claim sustained to the extent indicated in Opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of January, 1939.

**DISSENT ON AWARD 795**

This Award, as stated in the Opinion, resting on the reasoning contained in the "Opinion of Board" in Award 794, contains the same defects and is subject to the same criticism expressed in the Dissent on Award 794, except that the paragraph of carrier's position deleted in Award 794 is included here, though other parts of the carrier's statement are deleted from the record as quoted in this Award.

For the reasons set forth in the Dissent on Award 794 I dissent also on this Award.

/s/ Geo. H. Dugan

The undersigned concur  
in the above Dissent:

/s/ A. H. JONES

/s/ J. G. TORIAN

/s/ R. H. ALLISON

/s/ C. C. COOK