

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
CHESAPEAKE AND OHIO RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Clerk W. H. Hoeffler be compensated at rate of time and one-half for service performed on Sundays September 26th and October 3, 1937, instead of at straight time rate as paid by the Carrier."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties: "Rule 39 of Clerks' Agreement No. 6, effective November 16, 1936, reads as follows:

'(a) Except as provided in paragraph (b) of this rule, work performed on Sundays and 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, except that employees necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven (7), Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time. When such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.

'(b) Except on the Hocking Division, present incumbents of positions necessary to the continuous operation of the carrier (positions assigned to work seven full days per week) will be permitted to continue working seven days per week and be paid straight time rate for Sunday and holiday work, unless mutually agreed in writing between the Supervising Officer and General Chairman to place one or more of them under paragraph (a) of this rule, or until they permanently leave their present positions; in either event paragraph (a) will thereafter apply to such positions. This paragraph shall not be construed to prevent the reduction of a seven (7) day position to six (6) day position when continuous service is not required.'

"D. K. Henderschott and W. H. Hoeffler were the 'present incumbents' on Group 1 clerical positions assigned to work seven full days per week on November 16, 1936. These two employees continued on their respective positions, working seven full days per week under the provisions of Rule 39 (b), above quoted, being paid straight time rate for Sunday and holiday work.

"On Sundays, September 26 and October 3, 1937, Clerk D. K. Henderschott was absent from his position account sickness and as there was no qualified extra man to fill this vacancy Clerk W. H. Hoeffler was instructed

manently leaves the position to which he was assigned on November 16, 1936."

There is in evidence an agreement between the parties bearing effective date of November 16, 1936, from which the hereinbefore quoted rules are cited.

OPINION OF BOARD: The question involved in this dispute is a very narrow one. The Sunday and holiday work rule (Rule 39) excepts therefrom certain employees assigned to work seven days per week. The exception [Rule 39 (b)] provides that "present incumbents of positions necessary to the continuous operation of the carrier" will be permitted to continue to work seven days per week and will be paid the straight time rate for Sunday and holiday work.

The employee involved in this dispute held such a position, worked seven days per week, and was paid the straight time rate. On Sundays, September 26 and October 3, 1937, the occupant of another similar position was absent account of illness, and the claimant here worked his position on the days in question. The claim is for time and one-half for the two Sundays worked.

The parties agree that had claimant worked his regular position on the two days in question, he would have been paid the straight time rate. They also agree that had anyone else, other than an employee covered by the exception, worked the position, carrier would have been required to pay time and one-half for the Sunday work. In fact, all employees affected by the transfer except claimant were so paid.

The case turns on the meaning of the words "present incumbent," as used in the exception. It is clear that the parties intended and the rule contemplates the eventual elimination of all seven-days continuous work by employees. However, to avoid an immediate substantial reduction in pay to those employees who were working seven days per week, the exception was designed to permit "present incumbents" to continue to work their positions seven days per week. The right to seven days' work is lost when the "present incumbent" transfers to another position.

The rule operates in both directions, and when carrier assigned claimant to another position, all the rights that would have attached to any other employee attached to him.

The claim will be sustained.

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 provisions of Rule 39 (a) govern and W. H. Hoeffer should have received punitive overtime rates for the two Sundays in question.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1939.