

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE TEXAS MEXICAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that A. B. Muller be paid four hours' overtime for work performed on Saturday afternoon, August 9, 1941.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. B. Muller is assigned to the position of Bookkeeper-Clerk in the Auditor's office at Laredo, Texas. His regular work period is 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M. Monday through Friday, and 8:00 A. M. to 12:00 Noon on Saturday.

On Wednesday, August 6, 1941, Mr. Muller was instructed to lay aside his regular assigned work and to compile a special statement for the Traffic Department. Mr. Muller worked Wednesday, Thursday and Friday, August 6th, 7th, and 8th, on this special statement, which he completed at 5 P. M. August 8th.

On Saturday afternoon, August 9th, 1941, Mr. Muller was required to work four hours on his regular duties that had been put aside and remained undone during the three days he had been working on the special statement.

POSITION OF EMPLOYES: The employees quote the following rules in support of this claim.

RULE 57. SATURDAY AFTERNOONS OFF

"Only such employees whose work cannot be reasonably deferred, shall be required to work Saturday afternoons, and no deduction shall be made from the pay of the employees thus relieved."

RULE 42. NOTIFIED OR CALLED

"Employees notified or called to perform work not continuous with, before, or after the regular work period, or on Sundays and specified holidays shall be allowed a minimum of three (3) hours for two (2) hours' work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

Mr. Muller is regularly assigned to the position of Bookkeeper in the Auditor's office at Laredo, Texas. His regular work period is from 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., Monday through Friday, and 8:00 A. M. to 12:00 Noon on Saturday. The work regularly performed by Mr. Muller is of such a character that he is never required to work on Saturday afternoon.

reasonably be deferred. To sustain the claim of the Brotherhood is to say the Carrier must pay twice for what the employes have agreed they will do for straight time.

Wherefore, in all justice and equity, Carrier petitions this Honorable Board to deny the claim of the Brotherhood.

OPINION OF BOARD: The controlling facts in this case are not in dispute. They are: A. B. Muller, occupying the position of bookkeeper-clerk in the Auditor's Office at Laredo, Texas, was required to work on Saturday afternoon, August 9, 1941. On Wednesday, August 6th, he was instructed to lay aside his regular assigned work to compile a special statement for the Traffic Department, not connected with his regular duties. This special statement contained information necessary for use in respondent's negotiations with regard to a contract between it and another carrier. It is admitted that this work was properly assigned to the position held by Mr. Muller. He worked on this special report on August 6, 7, and 8, and completed this work at 5 P. M. on August 8th. He worked overtime in completing this special work, and was paid accordingly.

On Saturday, August 9, he resumed his regular work of making an Interstate Commerce Commission report, and the due date of that report is stated in the record to be the 26th of the month. He was required to work that Saturday afternoon, and claims time and one-half for the four hours worked that afternoon. The record shows that he generally worked one Saturday in four. He worked the following Sunday, August 10th, and this report was completed the following Wednesday on which day he also worked overtime.

Rule 57 reads as follows:

"SATURDAY AFTERNOONS OFF: Only such employes whose work cannot be reasonably deferred, shall be required to work Saturday afternoons, and no deduction shall be made from the pay of the employe thus relieved."

Both parties agree that the primary question for the Board's determination is: "Could Muller's work on Saturday afternoon have been reasonably deferred?"

The Carrier contends that because Muller worked Sunday, August 10th, and overtime on Wednesday, August 13th, the work could not be reasonably deferred. If the record did not show that Muller worked overtime regularly, its contention might be sound. But the record shows that Muller worked overtime each month for eighteen months. Several months, as indicated by the record, he worked more overtime hours than he did during August. That month he worked 38½ hours overtime, while in January, 1941, he worked 70 hours overtime; in January, 1942, he worked 74½ hours overtime, and in April, 1941, he worked 45½ hours overtime. Therefore, the Board holds that the fact he worked overtime on August 10th and 13th does not prove that the work could not have been reasonably deferred.

On the other hand, the record shows this report was completed on August 13th by working overtime on that date and on Sunday, August 10th, yet it was not due until thirteen days later (August 26th). Under these circumstances, the Board finds this work could have been reasonably deferred on the Saturday afternoon in question.

The Carrier contends that as Muller is paid a monthly salary based upon six days per week of eight hours each day, he has been paid for the work on this Saturday afternoon. It bases this contention on Rules 37 and 47. If it were not for Rule 57, there would be merit in its contention. To arrive at the true intention of the parties, the agreement must be read as a whole. Reading these three rules together, the only reasonable interpretation of the agreement is that it does not require the claimant to work Saturday afternoon except when the work could not be reasonably deferred. The Board has just

found that this work could have been reasonably deferred the Saturday afternoon in question. It, therefore, follows, that this afternoon was not a part of Muller's regular assignment, but was overtime work, under Rule 42. He should be paid for this overtime as he had previously been paid when he performed overtime work.

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 employe involved in this dispute are respectively carrier and employe 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.

DISSENT TO AWARD 2073, DOCKET CL-2061.

Contrary to the assertions contained in the Opinion, the record does not support the conclusion that the work could have reasonably been deferred. The conclusion is based on a mathematical calculation of overtime worked and a particular date on which a certain report was due. The due date of a particular report had no relation to the Carrier's requirement of this employe's work being completed within specific period and subsequent handling of the report through other departments. The Carrier's contention was not primarily based on the fact the employe worked the following Sunday; that was one of the elements and the employe would not have been worked that day at punitive rates except for the necessity of getting the work done. If the work could have been reasonably deferred, certainly the Carrier would not have worked the employe on Sunday at punitive rates. To the contrary, the fact that it was necessary to work the employe on Sunday supports the Carrier's contention.

This employe only worked eight hours on Saturday and received eight hours' pay. By its express terms the Agreement contemplates eight hours' pay for eight hours service on a regular assignment as the one here involved, and nothing can be read into the Agreement requiring additional compensation be paid over and above that provided for the regular eight-hour assignment. There is nothing in the Agreement providing for punitive payment on Saturdays, except for work performed in excess of the basic eight-hour day. There is no basic day provision of a less number of hours on a regular assignment such as here involved, and the sustaining of this claim is nothing less than the writing of a new rule which is beyond the jurisdiction of this Board. This award is an arbitrary declaration on the overtime question in complete disregard of decisions of former tribunals which first promulgated the basic day and overtime rules.

/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook
/s/ R. F. Ray
/s/ C. P. Dugan