

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violated the Clerks' Agreement when on Monday, July 5, 1943, it required Delivery Clerk Paul Piacheck to report for work at 9:00 A. M. instead of his regular assigned starting time of 6:00 A. M., and worked other employees outside of their regular work period in like manner, and

That carrier shall now reimburse Paul Piacheck and all others affected for such time July 5, 1943, as they were required to remain on duty outside of their regular assigned hours at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: On Friday, July 2, 1943, a notice was posted on the bulletin board at Chicago, Illinois by the General Foreman which notice read as follows:

"To all Concerned:

This Freight Station will work on Sunday basis Monday, July 5, 1943."

The regular assigned hours for Paul Piacheck was from 6:00 A. M. to 3:00 P. M. except on Sundays when the regular assigned starting time was 9:00 A. M. These hours of service were agreed to at the time the regular positions were established under the Clerk's Agreement dated September 1, 1936. The bulletined notice changed the starting time of position of Paul Piacheck, Delivery Clerk, and others, for one day only, namely July 5, 1943.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing the effective date of September 1, 1936 which contains the following rules:

Rule 23 (Overtime) reads as follows:

"(a) 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.

"(b) Where positions are now assigned in excess of eight (8) hours per day, and monthly rates are now in effect on such positions covered by this agreement to cover all service performed, such monthly rates will continue in effect until positions become vacant when they will be properly rated and filled as provided in these rules, unless otherwise agreed to between the Management and the General Chairman or their representatives.

The principal factor in this change in starting time was the fact that July 5, 1943 was a holiday and under Rules and Regulations September 1, 1936, one of the days generally recognized as a day when due to change in operation forces may be reduced, see Rule 30 (a), page 28,—

“Rule 30. Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employees below six (6) per week, except as follows:

(a) Week in which holiday occurs by the number of such days.”

The position of Piacheck was not annulled for the day, but starting time was changed and proper notice was given as required by Rule 28.

This claim should be denied for the following reasons:

1. Usual notice in such circumstances was posted July 2, 1943 that the freight house was to work on Sunday basis Monday, July 5, 1943, which was the holiday in lieu of Sunday, July 4, 1943. There is no claim by the Brotherhood that this notice was not understood by Piacheck, or that sufficient notice was not given for Rule 28.
2. Rule 18 contemplates that starting times may be changed and grants to an employee certain privileges in the event his starting time is changed thirty minutes or more for six consecutive working days, etc.
3. Piacheck made no protest to Agent or any other supervisory officer when notice was posted July 2, 1943 and he reported for work at 9:00 A. M. on July 5th.
4. There is no rule in Rules and Regulations September 1, 1936 that requires compensation at rate of time and one-half for all time required to work outside of regular assigned hours for work. Rule 23 (a), Overtime, provides:

“Rule 23 (a). 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 minutes basis at the rate of time and one-half.”

5. Piacheck did not work in excess of eight hours and therefore not entitled to penalty rate of pay for any of the hours worked on July 5, 1943.

OPINION OF BOARD: Claimant Paul Piacheck was regularly assigned as a delivery clerk at 14th St. Freight House, Chicago, Ill., with starting time 6:00 A. M. on Monday, Tuesday, Thursday, Friday and Saturday, and 9:00 A. M. on Sunday, Wednesday being his day of rest.

On Friday, July 2nd, the Carrier posted a notice on the Bulletin Board that the Freight Station would work on a Sunday basis on Monday, July 5th, 1943, with the result that Claimant and all other employees had a different starting time on July 5th.

The Carrier contends the controlling rules are those relating to starting time, namely, Rules 18 (a) and 28, and that, since the Carrier gave the proper 36-hour prior notice required by Rule 28 when changing starting time, it did not violate the provisions of the Agreement.

The Employees contend that under Rule 28 the Carrier would have no right to change the regular starting time from 6:00 A. M. to 9:00 A. M. in order to avoid overtime after the regular quitting time of 3:00 P. M. Rule 24 provides that work will not be suspended during regular hours for the purpose of absorbing overtime.

The Board is of the opinion that Rule 28 was intended by the parties to provide for a definite fixed starting time; that it can be changed is so provided; however, the changing of the starting time in this record was not for the purpose of fixing a new starting time but was rather for the purpose of absorbing overtime and this is a violation of the current Agreement.

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

That both parties to this dispute waived hearing thereon;

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.