

Award No. 3013

Docket No. CL-2966

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

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:

(1) That the carrier violated the Clerks' Agreement when it failed to render decision within thirty days of dates monetary claims were filed December 13, 1943 and March 9, 1944 in behalf of Clerk A. A. Hilk, and

(2) That employee A. A. Hilk shall now be paid time and one-half on the basis of his regular rate \$238.96 per month for work performed on his rest day (Sunday) November 7, 14, 21 and 28, and December 5, 12, 26, 1943 and January 2, 16 and 23, 1944, less compensation previously received for service performed on those dates.

EMPLOYEES' STATEMENT OF FACTS: Employee Hilk during the period covered by this claim was regularly employed as Assistant Chief Clerk, rate \$238.96 per month with Sunday as day of rest, and his seniority rights were confined to A Roster No. 5, Line Revision Bureau.

At his request employee Hilk was permitted by Agent, Mr. L. B. Hine, to perform work on the freight platform at Akron, Ohio, on the Sundays mentioned in the Statement of Claim, this work being the subject to rights of employees on Roster B-23 of the Kent Division, and for work performed on the Sundays involved Mr. Hilk was paid time and one-half at the rate applying to the class of service performed.

Claim was filed with the carrier December 13, 1943 covering Sunday work performed November 7th and 14th, 1943, Employees' Exhibit A attached, to which the carrier replied on January 10, 1944 advising that the matter was being investigated, Employees' Exhibit B attached. On January 27, 1944 employees called carrier's attention to the fact that the provisions of Rule 42(c) had not been complied with, and requested that claim be paid, Employees' Exhibit C attached.

On March 9, 1944 claim was filed covering Sunday work performed by employee Hilk on other dates specified in the Statement of Claim, Employees' Exhibit "D," and carrier's failure to render decision on this claim was called to its attention on April 21st and June 9, 1944, Employees Exhibits E and F attached.

The matter was thereafter handled in regular manner and payment claimed has been denied by each subsequent officer on appeal.

POSITION OF EMPLOYEES: There is an agreement between the parties bearing effective date of December 1, 1943 which contains the following Rule:

Rule 42 (Claims for Compensation) reads as follows:

where claims have been filed for time and one-half rate at the regular clerical rate of the individual working on freight house platforms, that such individuals are then denied the right to continue to perform this work on Sundays. Where instances of this kind are known, and individuals occupying excepted positions are used on Sundays to perform such freight house work, claim should be filed on behalf of the clerk who has been denied the right to perform the freight platform work because of having claimed time and one-half at his regular clerical rate if greater than the freight platform classification.

It is very important that each of you strictly enforce this rule. In filing the claim it should be pointed out that the carrier is attempting to remove work from under the scope of the Clerks Agreement by assigning it to employees not covered thereby, and thus denying such employees the right and the opportunity to perform this work.

There is the added possibility that with the holidays coming around that similar situations might occur. The above situation holds true with respect to holiday work as to Sunday work. Can I have your cooperation to break up this practice?

Sincerely and fraternally,

(signed) J. J. Schreur
General Chairman."

At the time this circular was issued by the General Chairman a new agreement which became effective December 1, 1943 was being negotiated and it was known that such extra work was being performed, but there was no request by the Brotherhood for a rule to cover payments to those who "volunteer" to work extra.

There is no rule in the agreement which prohibits such extra volunteer work and claims presented by the Brotherhood as a result of the circular letter dated November 17, 1943 as an attempt to change a practice so as to require a penalty payment by Carrier in all such circumstances.

Claim should be denied. To sustain this claim would mean that volunteer workers with no platform work experience would in many instances be paid a higher rate for the extra work than is paid to the regular experienced platform men whom they are assisting. It would further result in endless confusion in determining rates because these volunteer workers are from all classes of employees, from all departments, and some outsiders, and are paid different rates for regular work.

OPINION OF BOARD: The Statement of Claim presented to this Division is that there was violation of the Clerks' Agreement (Rule 42) when the Carrier failed to render decision within 30 days of dates claims were allegedly filed. Those dates respectively were December 13, 1943, and March 9, 1944. The claims for compensation, as to which the Carrier allegedly failed to notify the petitioners in writing within 30 days as required by Rule 42 (c), were claims that on the ten dates named in the Statement of Claim the Carrier had violated Rules 30, 32, 34 and 36 in respect to payments made the claimant on the certain ten Sundays named in the Statement of Claim. In its presentation of the claim to this Board the Petitioner emphasizes that "As the employees have previously pointed out the merits or demerits of the claim presented to the carrier by the employees on December 13, 1943 and March 9, 1944 are not being discussed here by the employees" and "The merits or demerits of the claim presented are not before this Board." It is thus apparent that the only Agreement violation which the Petitioner has presented to this Division is the alleged violation of Rule 42 (c).

In respect to the dates of November 7, 1943, and November 14, 1943, the Employees submit copy of a claim for compensation in writing, under date of December 13, 1943, which the Carrier acknowledges as having been received by the Agent, who replied that he would have to investigate and further states that it "later denied the claim in writing on February 9, 1944." This notice to

that effect, in writing, was not within 30 days from the date of December 13, 1943, when the claim was filed for the two dates of November 7th and November 14th, 1943, and thus it must be found that such notice was not within the period stipulated by Rule 42 (c).

In respect to the eight certain Sundays in the period November 21, 1943 to January 23, 1944, there is not sufficient evidence of the receipt by the Agent at Akron of a letter dated March 9, 1944, from the Local Chairman, to enable determination of whether the claims for those eight Sundays were made in writing within the 90-day period from the date the employe received his pay check, as stipulated in Rule 42 (a). The claims for such eight Sundays will therefore be remanded to the parties for settlement based upon facts that may be developed on the property.

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 parties waived oral hearing thereon;

That the carrier and the employes involved in this dispute are respectively carrier and employes 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

Based wholly upon application of Rule 42 to the claims presented to this Division, the claimant, A. A. Hilk, shall be paid the difference between an amount computed at the rate of time and one-half on the basis of his regular rate, \$238.96 per month, and the amount which he received for work performed on November 7th and 14th, 1943; claims for additional compensation for work performed on November 21st and 28th, December 5th, 12th and 26th, 1943, and January 2nd, 16th and 23rd, 1944, are remanded for settlement by the parties as indicated in the above Opinion.

AWARD

Claims disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 7th day of December, 1945.