

Award No. 3196
Docket No. CL-3176

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When on May 11, 1943, Mr. Leon C. Ehrman was instructed to perform duties outside of his regular assignment and not continuous with same from 4:00 P.M. until 7:00 P.M.

2. That the Carrier be required to pay Mr. Ehrman at punitive overtime rate on the basis of the rate of the position in connection with which the extra work was performed.

JOINT STATEMENT OF FACTS: On May 11, 1943, Mr. Leon C. Ehrman was instructed by his immediate superior to remain after his assigned hours to assist Clerk Robert I. Wert in the preparation of a special report covering "Statement of employees who left the service of the Motive Power Department of the Reading Company."

This was not part of the duties of Mr. Ehrman's assignment. Mr. Ehrman was instructed to work outside of his assigned hours from 4:00 P.M. to 7:00 P.M. and assist Clerk Robert I. Wert with a special report which was a part of Mr. Wert's assignment. Mr. Wert's rate of pay was \$163.10 per month, and Mr. Ehrman's rate was \$141.60 per month. Mr. Ehrman was instructed by his superior to submit an overtime form for the time worked.

POSITION OF EMPLOYES: There is in evidence, an agreement between the Reading Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, bearing the effective date of April 1, 1937, and from which the following rules are quoted:

Rule #5—(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) For positions coming within Groups 1 and 2 (a) of Rule 1, "Scope", of this agreement, where it is the practice at this time for employees filling same, to be permitted to work a less number of hours than eight (8) on any day of their assignment without corresponding deduction in pay, the practice will be continued, subject to the following:

difference between the rate of his regular position and the higher rate of the employee whose work he assisted in performing under Rule 19, therefore claim as submitted should be denied and Carrier so requests.

OPINION OF BOARD: On May 11, 1943, Claimant was directed to remain after his regularly assigned hours to assist another clerk in the preparation of a special report, the same being no part of Claimant's duties. Claimant's rate of pay on his regular assignment was \$141.60 per month. The other clerk's position involved had a monthly rate of \$163.10. It is Claimant's contention that he is entitled to time and one-half rate for the three hours worked on the basis of the higher rated position.

A proper consideration of the case requires an interpretation of Rules 5 and 19 of the current Agreement. These two rules provide:

"RULE 5.

(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) For positions coming within Groups 1 and 2(a) of Rule 1. "Scope", of this agreement, where it is the practice at this time for employees filling same, to be permitted to work a less number of hours than eight (8) on any day of their assignment without corresponding deduction in pay, the practice will be continued, subject to the following:

1. When required to do so, such employees will work the full number of hours, namely, eight (8) hours per day, for each and every day of the assignment without any increase in the compensation over and above that established for the assignment.

"Rule 5(b)—continued

2. For such positions, paragraph (a) of this Rule shall not apply.

3. For employees filling such positions, overtime will apply and be calculated on the following basis: When the total number of hours made or worked in any month exceeds the equivalent of eight (8) times the calendar working days in the month, such excess number of hours will be considered overtime and paid on the actual minute basis, at the rate of time and one-half.

Note: 'Calendar working days' for the purpose of establishing the measure of the required month's service as contemplated above shall be considered as all days in the month other than Sundays and the following holidays:—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.

4. Rule 5 (b) may be terminated by either party hereto serving thirty (30) days' notice upon the other of a desire to so terminate it."

"RULE 19. Employees temporarily assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

This Rule will not apply where absent employee is paid on account of sick leave or vacation."

It will be observed that Rule 5 (b) provides in substance that employees working less than eight hours on their eight hour assignment shall continue

to do so without loss of pay when it was the practice to do so when the current Agreement was negotiated. Rule 5 (b)-1 provides, however, that employees within the established practice may be required to work the full eight hours of their assignment on each day of their assignment without an increase in their compensation. Difficulty arises between the parties in their attempt to give Rule 5 (b)-3 a common meaning. This section of the rule provides in substance that overtime will be paid for hours worked each month in excess of eight times the number of calendar working days in the month. It is the contention of the Organization that in calculating overtime under this rule that it includes only such hours of work that grow out of his regular assignment while the Carrier just as forcibly contends that it includes all overtime whether in connection with his regular assignment or otherwise.

Construing Rule 5 as a whole, we think that it purports to deal only with the work of the employees assignment. It clearly means that any overtime work in connection with his regular assignment may be off-set against the time not worked on the regular assignment, and it is only when the former exceeds the latter that a basis for overtime in connection with the regular assignment accrues. If it should be construed as the Carrier contends, other rules of the Agreement would come into direct conflict with it. If any such purpose was intended, the Agreement could easily have been made to so show. We are of the opinion that Claimant is entitled to overtime pay for the three hours worked on another position at the higher rate of that position.

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 Employer 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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.