

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**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Leroy Adams and/or other unassigned Class 3 employes shall be paid on the basis of time and one-half for all time in excess of eight (8) hours per day, computed from starting of first tour of duty.

EMPLOYEES' STATEMENT OF FACTS: Mr. Leroy Adams, unassigned Class 3 employe at Dodge City, Kansas, was called for duty at 4:45 A. M., April 23, 1943. He worked from 4:45 A. M. to 12:45 P. M., reported for work again at 4:00 P. M. same date and worked until 8:00 A. M., April 24.

For the period 4:45 A. M. to 12:45 P. M., April 23rd, he was paid 8 hours at straight time; for the period 4:00 P. M. to 12:00 midnight he was paid 8 hours at straight time rate, and for the period 12:00 midnight to 8:00 A. M., the 24th, he was paid 8 hours at time and one-half rate or a total time paid for of 28 hours.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date October 1, 1942 in which the following rules appear:

ARTICLE VI

Section 1—Except as otherwise provided in these rules eight (8) consecutive hours work, exclusive of the meal period shall constitute a day's work.

Section 5—Where and to the extent that their services can be utilized for substantially a full-time period, there shall be a regular force of full time Class 3 employes established on freight and/or mail and/or baggage handling platforms and/or at stockyards and other similar locations. That part of the work at such places which cannot be handled by this regular force without periods of idleness because the total work to be handled is not uniform as to occurrence, volume or duration over any period of time, shall be handled by unassigned Class 3 employes in the order of their seniority, if available when needed. These unassigned Class 3 employes shall be paid a minimum of four (4) hours for four (4) hours or less of continuous service and a minimum of eight (8) hours for more than four (4) hours of continuous service, exclusive of meal period.

(2) Article VI, Section 5, of the Clerks' Agreement clearly supports the Carrier's payment to Adams for service performed by him on April 23-24, 1943.

(3) Article VI, Section 1, and Article VII, Section 1; of the Clerks' Agreement, relied upon by the Employees, are clearly inapplicable and do not support the instant claim.

(4) The instant claim is an attempt to broaden and extend the terms of existing agreement rules which may only be changed by negotiations pursuant to Section 6 of the amended Railway Labor Act and not by an award of the National Railroad Adjustment Board.

The Carrier has not been favored with nor privileged to see the submission of the Organization in this dispute, and is, therefore, not informed with respect to any alleged facts, contentions or other material which such submission may contain. The Carrier accordingly reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission that the Organization intends to file with the Board, as per notice of its Grand President dated July 9, 1945, or any subsequent oral agreement or briefs of the Organization in this dispute.

OPINION OF BOARD: Claimant, an unassigned Class 3 employee at Dodge City, Kansas, was called for duty at 4:45 A. M., April 23, 1943, and worked until 12:45 P. M. He was again called for work at 4:00 P. M. on the same day and worked continuously until 8:00 A. M., April 24, 1943. Carrier paid Claimant the pro rata rate of his position on each of the first two eight hour periods worked and time and one-half for the third eight hour period. The Organization contends that Claimant should be paid on the basis of time and one-half for all time in excess of eight hours per day, computed from the beginning of the first tour of duty.

This dispute is controlled by a proper application of Sections 1 and 5, Article VI and Section 1, Article VII, of the Agreement effective October 1, 1942, which provides:

"ARTICLE VI

"Section 1. Except as otherwise provided in these rules, eight (8) consecutive hours work, exclusive of the meal period, shall constitute a day's work."

"Section 5. Where and to the extent that their services can be utilized for substantially a full-time period, there shall be a regular force of full-time Class 3 employees established on freight and/or mail and/or baggage handling platforms and/or at stockyards and other similar locations. That part of the work at such places which cannot be handled by this regular force without periods of idleness because the total work to be handled is not uniform as to occurrence, volume or duration, over any period of time, shall be handled by unassigned Class 3 employees in the order of their seniority, if available when needed. These unassigned Class 3 employees shall be paid a minimum of four (4) hours for four (4) hours or less of continuous service, and a minimum of eight (8) hours for more than four (4) hours of continuous service, exclusive of meal period."

"ARTICLE VII

"Section 1. Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, continuous with and outside of regular assigned hours, on any day, will be considered overtime and paid on the actual minute basis, at the rate of time and one-half."

These rules properly construed provide for the payment of overtime for all time worked in excess of eight hours on any day, exclusive of meal

period. It is evident that Section 5, Article VI, provides an exception to the definition of a day's work as it is defined in Section 1. It will be noted that Section 5 provides that work which cannot be performed by the regular force of Class 3 employees established in freight, mail or baggage handling platforms or at stockyards shall be handled by unassigned Class 3 employees in order of seniority. Because of the fact this work was often not uniform as to occurrence, volume or duration, an exception was made as to what under such circumstances should constitute a minimum day's work by providing for payment on the basis of four hours for four hours or less of continuous service and eight hours for eight hours or less of continuous service. This rule clearly provides for minimum guarantees for this particular type of service. It in no way purports to change the effect of the overtime rule. The calculation made by the Organization is the correct one to be applied.

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 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 23rd day of May, 1946.