

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the Clerks' Agreement when it requires the regular six day position of Rate and Bill Clerk at Galion, Ohio, to work regularly each Sunday and Holiday on a call basis, and

(A) That Carrier shall now compensate employe D. L. Kline for eight hours at time and one-half rate for each Sunday and Holiday worked, retroactive to July 25, 1944 less amount previously paid for service performed on such days, and

(B) That the position shall be filled eight hours on Sundays and Holidays in accordance with the provisions of the Clerks' Agreement.

EMPLOYEES STATEMENT OF FACTS: Prior to July 25, 1944 there was employed at Galion, Ohio a Ticket Clerk with hours of assignment 7 PM to 5 AM. This position worked seven (7) days each week subject to a relief day and protected Train #7 each Sunday. There was also employed at Galion, Ohio a Rate and Bill Clerk which position was assigned regularly six days per week, Monday to Saturday, inclusive, with Sunday as the relief day. The hours of service on the Rate and Bill Clerk assignment were then from 9:00 AM to 6:00 PM with one hour lunch period. On July 25, 1944 the hours and the assignment were changed so that the hours of service of the Rate and Bill Clerk were thereafter from 10:45 AM to 7:45 PM with one hour lunch period and the assignment changed so that the position worked regularly each Sunday and Holiday on a call basis. The duties assigned to this position were those previously performed on Sunday by the Ticket Clerk, a position necessary to the continuous operation of the carrier, and subsequent to July 25, 1944 position of Rate and Bill Clerk has been required to work each Sunday and Holiday on a call basis.

The hours of assignment on the position of Ticket Clerk were changed in order to protect Trains #11 and #12, two new trains that were put on about that time. The employees submit as their Exhibit "A" copy of letter from Agent Blazer changing the assignment on position of Rate and Bill Clerk held by D. L. Kline, which clearly assigns to this position the responsibility and necessity of protecting Train #7, work that was attached to and formed an integral part of the assignment of the Ticket Clerk, which position worked each Sunday and Holiday performing these duties.

than two hours and forty minutes are paid time and one-half on the minute basis for the actual time worked.

In our conferences with the General Chairman we also stated that the position of Bill Clerk at Galion, Ohio is not a position necessary to the continuous operation of the Carrier. On Sundays and holidays the Bill Clerk does not perform any rating, typing or report work as he does regularly during his six day per week assignment.

It is noted in the statement of claim as quoted in Secretary Johnson's letter of February 21, 1946, that the employees agree that Bill Clerk Kline's position is a regular six day position. It is noted also that the employees do not cite any rule to support their statement of claim for eight hours at time and one half on Sundays and holidays when Kline works under the Notified or Called rule.

This claim should be denied for the following reasons:

1. Bill Clerk Kline is assigned to work six days per week. Any work performed on Sundays and holidays is performed on a call basis at punitive overtime rate in accordance with Rule 25(c).

2. If Bill Clerk position was one considered necessary to the continuous operation of the Carrier, under Rule #30 Kline would still be assigned six days with one relief day per week and a regular assigned relief or extra employe would perform work on the relief day. This is not such a position.

3. The language of Rule 25(c) is clear and unambiguous. It neither provides nor is there any inference contained therein that a claimant will be paid eight hours at time and one-half just because he has been notified and called to perform work on Sundays and holidays with a certain degree of regularity. The rule is not restrictive as to the number of times an employe may be called to perform work on Sundays or holidays during any stated period.

4. Bill Clerk Kline was notified to work each Sunday 6:30 PM until departure Train #7 and he works less than two hours, for which he is paid a minimum of four hours under Rule 25(c).

5. Previous awards by the Third Division in similar cases support position of the Carrier in this claim. See Awards 1178 and 2549.

OPINION OF BOARD: The factual situation here requires statement. A Ticket Clerk and Binding Operator worked 7 days a week from 7:00 p.m. to 5:00 a.m. Effective July 28, 1944, these hours were changed to 11:00 p.m. to 8:00 a.m.

The Bill Clerk's assignment was for 6 days from 9:00 a.m. to 6:00 p.m. This was changed on the same date to 10:45 a.m. to 7:45 p.m. The Bill Clerk also was required on Sundays and holidays "to protect Train No. 7 under the Call Rule, starting the call work tour at 6:30 p.m."

The work of protecting Train No. 7 covers the selling of tickets and the handling of baggage and mail on and off the train. The Carrier states that the change was made so as to have the bill clerk available to sell tickets for Train No. 7 due to depart at 7:34 p.m. A laborer assisted in working the train. Prior to the change the Bill Clerk assisted in ticket sales and handling of mail and baggage on Trains 15 and 16.

It appears obvious that one of the purposes of these changes of hours was to put the Bill Clerk's hours where he would protect Train No. 7 six days a week as a part of his regular assignment and on Sunday under the Call Rule. The effect of the assignment was to put him on a seven-day week so far as the protection of Train No. 7 was concerned.

The employees claim the violation of several rules and claim pay under Rule 20 (a), the 8-hour basic day rule, and 30 (a), the Sunday and Holiday Rule. The Carrier claims it paid properly under Rule 25 (c), the, the Notified or Called Rule.

It seems to us that the questions here presented are decided in Award 3054. The rules considered are identical. Here the work which Claimant does on seven days is that of a Ticket Clerk. We held in Award 3054 that the selling of tickets to prospective passengers is necessary to the operation of the carrier. That classifies this employee claimant as one "necessary to the continuous operation of the carrier" under Rule 30 (a). There does not seem to be any dispute but that he is "regularly assigned to such service". He is not, however, given a regular day off duty, but is required to work on Sunday, the seventh day.

The Carrier admits its obligation to pay overtime under Rule 25(c), the Call Rule, and denies its obligation to pay under the provisions of Rule 30(a). This position being necessary to the continuous operation of the Carrier brings it within the provisions of Rule 30(a) requiring payment at the rate of time and one-half for work on the seventh day.

The question then comes, how many hours shall be paid for at time and one-half? The hours actually worked, or eight hours under Rule 20(a)?

In Award 3054, we held that the assignment of an employee, occupying a position necessary to the continuous operation of the carrier, to work his assigned day off in seven is entitled to eight hours' pay at the time and one-half rate.

On behalf of the Carrier, it is insisted that Award 1178 covers a situation "both as to circumstances and rules on all fours with that here involved" and the claim being denied there, this one should be denied here. We should not here undertake to review the construction put upon the rules involved in Award 1178. We are here called upon to construe the rules involved in this claim.

In Award 3054 it was contended on behalf of the carrier that Award 1178 was "identical" with that there decided. We note that the carrier in its position in Award 3054 said:

"The Clause in Section 1 reading 'except as otherwise provided in these rules' clearly provides that the eight-hour basic day provisions of the rule are qualified by the provision of other agreement rules which provide for the payment of less than eight hours."

We agree with the construction which the Carrier put upon the rule in Award 3054 (which is identical with Rule 20(a) involved here), which in our language means this: The eight-hour basic day rule applies and requires payment for a minimum of eight hours except in those cases where the rules specifically provide for the payment of less than eight hours.

We have determined that the Claimant here is entitled to pay under the provisions of Rule 30 (a). There is no provision in Rule 30 (a) which provides for the payment of less than eight hours for work performed on the seventh day. Hence, the rules require payment for eight hours.

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 Claimant is entitled under the provisions of Rule 20(a) and Rule 30(a) to be paid at the rate of time and one-half for eight hours for the work performed on the Sundays and holidays involved in this claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1946.