

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 ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement at Marion, Ohio, when it refuses to compensate Extra Clerk for service performed on Sundays at time and one-half rate, and

That Carrier shall now compensate employe J. P. Rubins for all Sundays worked, retroactive to May 13, 1945, at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Employe Rubin is an Extra Clerk holding no regular assignment. Rubin worked the first trick position of outside caller, Marion, Ohio, rate \$5.59 $\frac{1}{4}$ per day on Sunday, May 13, 1945. On Sunday, May 27, 1945, he worked the third trick position rated at \$5.59 $\frac{1}{4}$ per day. He has continued to work as an Extra Clerk on numerous other Sundays since May 13, 1945, for which service he was compensated at pro rata rate of position worked. All of the positions involved are necessary to the continuous operation of the carrier, and are worked seven days each week in accordance with the provisions of Rule 30 of the Clerks' Agreement. Sunday is the normal rest day for all Extra Clerks.

POSITION OF EMPLOYEES: There is in effect between the parties an Agreement bearing an effective date of December 1, 1943, amended July 1, 1945, which contains the following rules:

Rule 20 (Day's Work and Overtime) reads as follows:

(a) Except as otherwise provided in these rules, eight (8) consecutive hours work, exclusive of meal period, shall constitute a day's work. Time in excess of eight (8) hours on any day, exclusive of meal period, will be considered overtime and paid on the actual minute basis at the rate of time and one-half.

(b) Employes paid on a tonnage or piece work basis with an hourly, daily or monthly rate required to perform service in excess of eight (8) consecutive hours exclusive of meal period on any day or on their rest days or any of the specific holidays shall be paid earnings for tonnage or piece work for the entire tour of duty plus one-half of the hourly pro rata rate for the overtime hours worker, but in no case less than as provided for in paragraph (a) of this Rule 20.

(c) Where positions covered by this Agreement are now assigned monthly rates to cover all service performed, such monthly rates and

OPINION OF BOARD: Claimant was an extra clerk from May 13, 1945 to June 27, 1945. During this period he worked several Sundays on positions necessary to the continuous operation of the Carrier and was compensated at the pro rata rate. The Organization contends that Claimant was entitled to be paid at the time and one-half rate under Rule 30, the Sunday and Holiday rule of the current Agreement. The pertinent part of this rule is:

"(a) Except as provided in Rule 20 (c) and Memorandum of Agreement No. 1, which is page 50 of this agreement, work performed on Sundays * * * shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the Carrier, and who are regularly assigned to such service, will be assigned one regular day off duty in seven (7), Sunday if possible, and if required to work on such regularly assigned seventh (7th) day off duty will be paid at the rate of time and one-half; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

Rule 20 (c) and Memorandum of Agreement No. 1 have no bearing upon the present controversy. The record shows that Claimant was an extra man having no regular assignment. It is not disputed that if the regular occupants of the positions Claimant worked had performed the work themselves they would have been compensated at the pro rata rate.

Under the Sunday and Holiday rule, all Sunday work is to be compensated at the time and one-half rate except employees necessary to the continuous operation of the Carrier who have been regularly assigned to such service. Claimant was not assigned within the meaning of this rule. Consequently, in the absence of any other controlling rule, Claimant is entitled to be paid at the time and one-half rate under this rule. Award 596. And the fact that the regular occupant of the position would have been compensated at the pro rata rate, had he worked it, does not change the application of the rule. Award 597.

The Carrier contends that the result is controlled by Rules 7 (f) and 20 (d) of the current Agreement which provide:

"Extra qualified employees will be given preference in filling temporary vacancies on positions necessary to continuous operation of the railroad of three (3) days or less duration. Senior qualified employees making application for temporary vacancies in excess of three (3) days and less than thirty (30) days, will be given preference." Rule 7 (f), current Agreement.

"Extra employees who work on more than one position within a twenty-four hour period will be paid on the same basis as the regular employees would have been paid had they worked. Each position is to be considered separately and paid for on that basis. Time worked in excess of eight hours on any single position will be considered overtime and paid for as provided in this rule. Extra employees who work more than six separate assignments within six (6) days will be paid at the rate of time and one-half for the seventh assignment worked, after which another six (6) day assignment period will begin." Rule 20 (d), current Agreement.

We find nothing in these two rules which purports to modify the Sunday and Holiday rule or to in any manner deal with Sunday work as such. Rule 7 (f) deals with seniority and the right to perform certain work. It in no way purports to fix the rate of pay or to modify the Sunday and Holiday rule with reference to the rate therein provided for Sunday work.

Rule 20 (d) likewise deals with matters other than Sunday work. It provides the rate of pay for extra employees under certain conditions therein specified, but Sunday work is not alluded to. The first sentence of the rule deals with the rate of pay where an extra employee worked more than one

position in a twenty-four hour period. The second sentence simply provides that each position shall be considered separately and dealt with on that basis. The third sentence provides that work in excess of eight hours on each position will be paid for as overtime. The fourth sentence provides that an extra man who works more than six (6) separate assignments within six (6) days will be paid time and one-half for the seventh, after which another six-day assignment period will begin. Nothing appears in the rule which even purports to change the effect of Rule 30, the Sunday and Holiday rule.

There being no rules modifying Rule 30, we are obliged to give effect to that rule as written. The applications of the rule as made in Awards 596 and 597 control the decision of this dispute. An affirmative award is required.

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 Carrier violated the Agreement as charged.

AWARD

Claim sustained as to Sundays worked from May 13, 1945 to June 27, 1945, inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1947.