

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**

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier disregarded the provisions of Rule 4 of the Schedule for Clerks and Rule 4 of the Schedule for Freight Handlers, effective August 1, 1929, when on September 30, 1945, a number of employes covered by the rules of the Schedule for Clerks and Schedule for Freight Handlers, who were on duty at 2:00 a.m., September 30, 1945, were required to work one hour in excess of their normal assigned work day of eight hours, as a result of the change from War Time to Standard Time, effective at 2:00 a. m., September 30, 1945, and were not compensated for one hour at punitive rate of their assignments, being allowed only their work day period of eight hours.

(b) D. G. Watson, Ticket Clerk, Decatur, Illinois, daily hours of assignment 12:00 midnight to 8:00 a.m., S. J. Burton, Yard Clerk, Decatur, daily hours of assignment 11:30 p.m. to 7:30 a.m., and other employes covered by the Schedule for Clerks and Schedule for Freight Handlers, who were required to remain on duty one hour in excess of their normal assigned work period of eight hours, to be compensated for one hour at punitive rate of the positions to which assigned, and on which nine hours service was rendered because of change from War Time to Standard Time effective 2:00 a.m., September 30, 1945.

EMPLOYEES' STATEMENT OF FACTS: D. G. Watson, Ticket Clerk, Decatur, Illinois, daily hours of assignment 12 midnight to 8:00 a.m., S. J. Burton, Yard Clerk, Decatur, daily hours of assignment 11:30 p.m. to 7:30 a.m., and a considerable number of other employes covered by the Schedule for Clerks and Schedule for Freight Handlers, assigned to positions necessary to continuous operation at Decatur and other stations on the railroad, were required to remain on duty one hour in excess of their normal assigned work day period. Employes reporting for work at 11:30 p.m., on September 29th, worked according to the clock, remaining on their assignment until 7:30 a.m., September 30. With the turning back of the clock one hour at 2:00 a.m., September 30, 1945, employes on duty at that time completed their daily assignments working according to the clock, which resulted in all employes affected having to protect their respective assignments one hour in excess of their regular work period of eight hours.

All employes on duty at 2:00 a.m., September 30, 1945, when the clock was turned back one hour, were paid according to the clock and not on the basis of the actual time required to remain on their respective assignments.

report for duty at the beginning of their assignment and the time they were relieved from duty at the completion of their assignment was only eight (8) hours as measured by the clock indicating standard time, it is obvious that the alleged claim for one (1) hour at punitive rate is not justified under the provisions of Rule 4(a) of the Schedule for Clerks.

The position of the Committee in the alleged dispute referred to herein is inconsistent with the position of the Committee as outlined in General Chairman Rogers' letter of February 5, 1942, quoted in the Carrier's Statement of Facts, and in that connection attention is directed to that part of the General Chairman's letter of February 5, 1942, reading as follows:

"For instance, a yard clerk or caller with hours of assignment 12 midnight to 8:00 A.M., would complete the assigned tour of duty at 8:00 A.M., irrespective of the fact that because of the moving up of the clocks one hour, they would actually be on duty a total of seven hours. This, of course, is something over which the employe has no control and under the rules, he or she is entitled to eight hours, or one day's pay at the rate of the position. If necessary for the employe to work beyond the designated time terminating the daily assignment, the overtime rule will apply."

(emphasis supplied)

It will be noted from that part of the General Chairman's letter quoted above that it was the position of the Committee that if an employe assigned to work from 12:00 o'clock midnight to 8:00 a.m. reported for duty at 12:00 o'clock midnight on February 8, 1942, and was relieved from duty at 8:00 a.m. the following morning, February 9, 1942, such employe should be paid eight (8) hours at pro rata rate, and if required to work beyond 8:00 a.m., the employe involved should be paid overtime for all time worked after 8:00 a.m. In other words, the General Chairman contended that if an employe was required to work beyond the designated time he would ordinarily go off duty on the morning of February 9, 1942, such employe should be paid therefor at overtime rate, and the Carrier agreed with the position of the Committee in that connection.

In that connection attention is directed to the Carrier's Exhibit "A" wherein it is shown that employes who were on duty at 2:00 a.m., February 9, 1942, and who were required to work beyond the designated time they ordinarily went off duty were paid for all such time at the overtime rate.

When consideration is given to that fact and the further fact that neither Mr. Watson nor Mr. Burton was required to work in excess of eight (8) hours on September 29, 1945, as measured by the clock indicating standard time, or beyond the time designating the ending of their regular assignment, it is obvious that the alleged claim for one (1) hour at punitive rate is not justified.

OPINION OF BOARD: Claimants are D. G. Watson, Ticket Clerk, Decatur, Illinois, assigned 12:00 midnight to 8:00 a.m., S. J. Burton, Yard Clerk, Decatur, Illinois, assigned 11:30 p.m. to 7:30 a.m., and other similarly situated. Each claims one hours pay at time and one-half rate when they were required to work nine hours elapsed time when daylight saving time was abandoned by Act of Congress, although each worked only his regular assignment by the clock. The applicable rule is:

"All work in excess of eight hours exclusive of the meal period on any regular work day will be considered overtime and paid on the actual minute basis." Rule 4(a), current Agreement.

We think the claim should be sustained. Claimants work on an hourly or daily rate with a basic eight-hour day. When an employe actually works nine hours, even though the clock shows only eight hours because of arbitrary changes in time by operation of legislative enactment, Rule 4(a) applies and time and one-half for the extra hour is payable.

The Carrier urges that as it paid eight hours time for seven hours actually worked when daylight saving was put into effect, that there is a reciprocal obligation on the part of employees to work nine hours elapsed time for eight hours pay when standard time was restored. No such agreement or understanding was had. In fact, when daylight saving time went into effect in 1942, and the matter of compensation was adjusted by agreement, it was expressly stipulated as follows:

"With respect to the question raised by you concerning a return to standard time at some future date. If and when we are confronted with that situation, consideration can be given at that time to the question of how employees so affected are to be compensated."

It is clear, therefore, that the adjustment of time claims in 1942 can have no effect whatever on the present claims. In the absence of any agreement or understanding to the contrary, the claims are sustainable under Rule 4(a) of the current Agreement.

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 Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1945;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1947.