

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railroad, that

(1) All Extra Board, extra, emergency, or furloughed Clerks worked on Sundays at Armourdale Yard, Kansas City, Kansas, be paid time and one-half for all work performed on Sundays, effective July 15, 1945, in accordance with Rule 54.

Attached will be found statement listing each such extra employe and the dates claimed from July 15, 1945, to September, 1946, inclusive. Claims after September not included in this statement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence, an Agreement between the parties, bearing effective date of August 2, 1945, except Rule 54, which is effective July 15, 1945.

The question of paying the Extra Board and other extra Clerks properly was discussed with the Labor Department of the Chicago, Rock Island & Pacific Railroad in Chicago, but nothing was done about the complaint.

March 16, 1946, the General Chairman addressed the following letter to Mr. Mallery:

"Referring to various conversations we have had in regard to proper relief day to be assigned men on the extra board—that is, Rule 13 Extra Board men and furloughed employees who do not have a regular assignment.

It is our position that these extra board men and furloughed employees do not have a regular assignment and must have Sunday as their day of relief—or their punitive day would be that of Sunday.

I note in Award 2918 senior employees requesting Sunday will be assigned Sunday as relief day even if it does require the carrier to pay time and one-half for that relief day. Using that part of Rule 54 where it say 'Sunday, if possible' it is our position that it is possible to assign such extra employees Sunday as their relief day."

trolling agreement and which applied to the instant situation puts it on an entirely different plane than awards made by your Board on other properties having less distinctive rules concerning the use of extra men and continuous service positions.

5. That because of these conditions the Carrier insisted upon and secured a distinct understanding with the employes' representatives that the purpose of Rule 54 was to provide relief and that it was not a penalty rule.

6. That the agreement of August 13, 1945, together with the plain provisions of Rule 13, both with respect to the rate of pay of extra employes, when used to relieve a seven day assigned employe on his relief day, cannot be construed to provide that other than the basic pay rate of the position relieved will be paid regardless of the day of the week on which it was relieved.

7. That by the adoption of this Rule 54 under the distinctive conditions existing on the Rock Island with respect to the prior application of Rule 64 of Decision 1621 and the proper application of Rule 13 as determined by your Board in Award 1072 it was the intent of the parties in agreeing to Rule 54 that they were providing a relief rule which would permit the Carrier to relieve employes assigned to continuous operation positions for one day of rest in seven without penalty payment in any instances.

8. Under the circumstances involved in the inclusion of Rule 64 of Decision 1621 as new Rule 54 in the Agreement of August 2, 1945 on this property and the application thereof, under rules and conditions existing hereon, the Carrier should not be bound by any of the awards of the Third Division of the National Railroad Adjustment Board issued in the disposition of disputes on other properties where the factual situations were not identical to those in this docket and where dissimilar rules were controlling.

The Carrier contends that this case must be decided upon its own merits and under the rules and agreements in effect on this property and not upon conditions which may have existing on other properties under different rules, conditions and circumstances.

We respectfully petition your Board to deny the claims of the employes.

OPINION OF THE BOARD: This claim of the System Committee involves the question of whether or not all extra board, extra, emergency or furloughed clerks should have been paid time and one-half for all work performed on Sundays at the Armourdale Yard of the carrier, located in Kansas City, Kansas, during the period from July 15, 1945 to and inclusive of September, 1946.

A list of such employes, being thirty-four in number, and the dates for which they claim such extra compensation is attached to the claim.

During the period from July 15, 1945 to and inclusive of September 30, 1945 the record discloses that the carrier paid all employes on an overtime basis for Sunday work and consequently this period of time will not be further considered.

The parties' effective agreement, by Rule 54, provides as to Sundays and holidays as follows:

"Work performed on Sundays and the following holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday)—shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such services will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate

of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight-time rate."

The exception, so far as material here, has been correctly construed in Award 596 as follows:

"* * * If, therefore, the incumbent of a regular relief position occupies the off day of a position in continuous operation, whether such off day be Sunday or any other day, such relief man receives only pro rata time.

"* * * If such furloughed or extra man relieves the seven day position on a week day he is, of course, entitled only to straight time rate and the regular incumbent would be entitled only to straight time rate for the Sunday work; but if the seven day position has Sunday as the off day and it is filled by an extra or furloughed man, he then is subject to the first section of the Sunday rule, that is, he is entitled to time and one-half for such work. This is so because he has nothing to do with the exception to the rule; he is in no sense regularly assigned and as before pointed out this phrase relates to the regular incumbent and not to the extra man."

See also Awards 597, 750 and 3525.

Therefore, under Rule 54, all of the claimants, consisting of extra board, extra, emergency or furloughed clerks, are entitled to receive payment on an overtime basis for the work performed on Sundays during the period from October 1, 1945 to September 30, 1946, unless otherwise restricted or limited.

Carrier calls attention to Rule 13 of the agreement. This rule provides the authority to maintain extra boards by mutual agreement. It provides, when an Extra Board is established, for seniority, the rates of pay, which shall be the same as the positions filled, and how it is to operate generally; but it does not, in any manner, limit or modify the provisions of Rule 54 as to the right to overtime.

Carrier has also called our attention to the Memorandum Agreement of August 13, 1945 which relates to Rule 54 and its application. While, by the following language: "Such extra or furloughed clerks will be paid the rate of each position they relieve," the memorandum provides the base pay to be received by the extra or furloughed clerk when filling a position, it does not, however, by any provision therein in any way limit or modify the provisions of Rule 54 as to the right to overtime.

As to the list of thirty-four individual extra board, extra, emergency or furloughed clerks which is attached to the System Committee's claim there is evidence that some of them have been properly paid for part of the Sundays for which they have made claim and, these payments are admitted. Likewise the carrier contends that two of the individuals did not work on a Sunday for which they have made claim.

From the record before us it is not possible to fix the exact Sundays each of the individuals worked and for which they were not paid overtime. But these records are in the possession of the Carrier and can be supplied by it.

We allow the claims of the individual extra board, extra, emergency or furloughed clerks, whose names are attached to the System Committee's claim, on the basis of overtime, that is, time and one-half, for all Sundays worked between October 1, 1945 and September 30, 1946 and direct that the carrier pay to each claimant the difference between what has been paid and what should have been paid on the basis as herein allowed.

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 employes involved in this dispute are respectively carrier and employes 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 Rule 54 of the agreement.

AWARD

Claim sustained as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.