

Award No. 3794

Docket No. CL-3806

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Louisiana and Arkansas Railway Company, that the carrier violated the Clerks' Agreement:

(1) When on March 9, 1946 and subsequent Saturdays following the issuance of bulletin posted February 27, 1946 over the signature of Mr. W. F. Pregge, Auditor, it unilaterally changed the hours of assignment on Saturdays and required A. L. Barnes, H. B. Mackey, J. A. Sava and other Clerks employed in the Accounting Department to work from 1:00 P. M. to 4:00 P. M. without additional compensation, and

(2) That A. L. Barnes, H. B. Mackey, J. A. Sava and all other Accounting Department clerks be compensated additionally for work performed after 12:00 Noon on Saturday, March 9, 1946, and subsequent Saturdays on the actual minute basis at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: Records show that prior and subsequent to the effective date of our first agreement with this carrier (August 1, 1929) the carrier recognized four hours and 15 minutes or four hours as constituting a day's work on Saturday in its Accounting Department, and as evidence of that fact we attach as Employees' Exhibit "A" copy of office rules posted June 1, 1929 from which the Board will observe the assigned hours Saturday were from 8:00 A. M. to 12:15 P. M.

Effective April 1, 1940 Saturday hours were fixed at 8:00 A. M. to 12:00 Noon as indicated by bulletin posted March 29, 1940 over the signature of Auditor W. F. Pregge, and copy of this bulletin is attached as Employees' Exhibit "B". In the years following 1940 the hours on Saturday continued to be 8:00 A. M. to 12:00 Noon as indicated by bulletins posted from time to time and we attach as Employees' Exhibits "C", "D" and "E" copies of bulletins posted January 3, 1944, May 1, 1944 and September 11, 1945.

As of January 1, 1946, other than excepted positions and Porters, the number employed in the Accounting Department was 105. Two positions were abolished January 22, 1946 and eight positions were abolished February 11, 1946 so that the total number employed in the Accounting Department

Award 2460: This is another Great Northern case and the award was based upon their Rule 42 as quoted above in connection with comment on Award 2040.

Award 2280: The question involved in this case had to do with employees "necessary to the continuous operation of the railroad". No such language as this is to be found in our Rule 82, which simply refers to employees "necessary to perform the business of the carrier."

The carrier is properly compensating clerical employees for all services rendered in accordance with the agreement. There is no rule or understanding that they will be paid pro rata or overtime for Saturday afternoon in addition to a day's pay for Saturday morning work, and carrier requests the Board to deny the claim which is without merit.

Exhibits not reproduced.

OPINION OF BOARD: The System Committee claims that commencing on Saturday, March 9, 1946 and continuing on the Saturdays following the Carrier violated their agreement by changing the hours of assignment and requiring certain clerks in its Accounting Department to work from 1:00 P. M. to 4:00 P. M. without additional compensation. It asks that A. L. Barnes, H. B. Mackey, J. A. Sava and all other Accounting Department clerks be compensated for work performed after 12:00 Noon on each of said Saturdays on the actual minute basis at the rates of time and one-half.

The record establishes that prior to the effective date of the parties' agreement, which is August 1, 1929, and subsequent thereto the office rules of the Carrier's Accounting Department, posted June 1, 1929, assigned the position herein involved to hours of work on Saturdays from 8:00 A. M. to 12:15 P. M. That these hours for Saturday continued in effect until March 29, 1940 when they were changed, effective as of April 1, 1940, to the hours from 8:00 A. M. to 12:00 Noon and that they have continued at those same hours, as shown by subsequent bulletins. Occasional work was done on Saturday afternoons during this period but it was not in any substantial amount nor by any considerable number of employees.

However, commencing with the first of the year 1946 the Carrier reduced the number of employees in the Accounting Department and thereafter, on February 27, 1946, issued a bulletin as follows:

"To Employees Accounting Department:

Effective at once, when Saturday afternoon work is necessary,
office hours for that day will be observed as follows:

8:00 A. M. to 12:00 N.
1:00 P. M. to 4:00 P. M."

Immediately following this bulletin, and commencing on March 9, 1946, the Carrier required a large number of its employees to work a considerable number of Saturdays. The record shows this continued through the sixteen Saturdays immediately following in the months of March, April, May and June. The evidence fully establishes that this Saturday afternoon work was the result of, and caused, by the Carrier's reduction in its forces in this Department immediately prior thereto.

The committee claims this is in violation of Rule 82 of their agreement which is the "Saturday Afternoon Off" Rule.

Rule 82 provides:

"Only such employees as are necessary to perform the business of the carrier shall be required to work on Saturday afternoon and no deductions shall be made from the pay of employees thus relieved."

It is true, as Carrier contends, that Rule 65 of the parties' agreement provides that a week shall be six days; that Rule 49 provides that eight hours shall constitute a day; and that Rule 58 provides that overtime shall be paid for time in excess of eight hours. However, the record establishes that it had long been the practice of this Carrier to quit work in its Accounting Department on Saturdays at 12:15 P. M., which hour was later changed to 12:00 Noon, without deducting any pay from the employees because thereof. In order to preserve this practice, and without penalty to the employees, Rule 82 was written into the agreement. This rule preserves this practice unless such employees are necessary to perform the business of the Carrier. The difficulty lies in the fact that the rule does not spell out just when such employees shall be considered necessary. Of course, in the first instance, that must be in the judgment of the management. But this right of management to decide whether or not such employees are necessary to perform the business of the Carrier is not absolute and one that can be arbitrarily or capriciously exercised but it must be reasonably exercised and in such a manner as will carry out the purpose for which this rule was intended.

There is no evidence that there was any unusual or out of ordinary run of business during this period, or that work was piling up because the force was unable to handle it but, as has already been stated, it appears that such work became necessary because of the reduction in forces which reduction, the record shows, continued while the employees were being required to work on Saturdays. Certainly this rule does not intend that these employees may be required to work on Saturday afternoons in order to destroy the very positions they hold. Such is not necessary in order for the Carrier to perform its business and such is clearly neither the purpose nor the intent of the Rule. We find the Carrier violated Rule 82 when it required these employees to perform work on Saturday afternoons which was made necessary by its reduction of forces in the Accounting Department.

As to the allowance of the claim on a basis of time and one-half for all time actually worked on Saturday afternoons this Board has often approved such claims under rules like or similar to Rules 59 and 60 of the parties' agreement and nothing would be gained by a further discussion of that issue. Some of these Awards are 2040, 2073, 2268, 2349, 2460 and 3509.

As to the extent of the claim that should be allowed, we find that all clerks in the Accounting Department who were required to work on Saturday afternoons, commencing with March 9, 1946 and continuing through the sixteen Saturdays following in March, April, May and June of 1946, shall be paid for all time actually worked on those afternoons on the basis of time and one-half.

As to what the practice was following June of 1946, the record is not certain. It appears that additional force reduction took place in May of 1946 and it is apparent that these employees in the Accounting Department were required to work on Saturday afternoons in the period following. If that be true, then these employees are entitled to be paid for that work on the same basis as the claim herein allowed, and for such period of time as it can be said the work they were required to do on Saturday afternoons was the result of such reduction in forces.

With this interpretation of Rule 82, if the parties cannot agree as to the cause of work performed on Saturday afternoons after June 29, 1946, if any, then the claim as to that part shall proceed to further hearing on the propriety for the purpose of determining that fact.

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 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 has violated the agreement.

AWARD

Claim sustained as in the Opinion set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1948.