

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

(TEXAS AND NEW ORLEANS RAILROAD COMPANY)

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

(1) Work performed on Sundays and holidays is not overtime within the meaning of Article VI, but is instead the work of a day, separate and apart from the work of any other day, within the meaning of Article V; and that

(2) H. Luening, fruit and produce clerk, New Orleans, be paid (a) on the daily basis, as required by Rule 45, (b) for a day's work, as required by Article V, and (c) at time and one-half rate, as required by Article VII for services performed on Sundays, August 19th and 26th, 1945.

EMPLOYEES' STATEMENT OF FACTS: The dispute at hand concerns the method of payment of H. Luening, Clerk in the New Orleans Freight Station, for services performed Sundays, August 19th and 26th, 1945. It is the position of the Carrier that Sunday and holiday service is "overtime" within the meaning of Article VI, and that it should be paid for as such. It is the position of the Employees that time worked on Sundays and holidays is not "time in excess of eight (8) hours" "on any day", within the meaning of Article VI, but is instead the work of a day, wholly separate and apart from the work of any other day, within the meaning of Article V, and should be paid for as such. The conflicting positions of the parties, as shown, constitute a dispute which is submitted to your Honorable Board herewith for decision.

As of the dates of this claim, H. Luening, Clerk, New Orleans Freight Station, was assigned to work the Fruit and Produce Clerk job 6:00 A. M. to 3:00 P. M. daily except Sundays and holidays. He was paid on a daily basis for week-day service as per Rules 45 and 27, his rate of pay being \$7.32 per day. While so assigned, he was used from 9:00 A. M. to 12:30 P. M. Sunday August 19th, 1945, and from 9:00 A. M. to 12:00 Noon on Sunday, August 26th, 1945. He was erroneously paid for this Sunday service on an

5. There has been no violation of the Agreement and the Organization is making an effort here to secure a new rule.

The Carrier's position in this case is soundly supported by your Board's interpretation of these rules in previous identical disputes (Awards 1178 and 3037).

Wherefore, in consideration of the facts, applicable rules of the Agreement, and decisions of your Honorable Board in similar disputes, the Carrier urges that the contentions and the claim in this case be, in all things, denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The only substantial differences between the facts in this docket and Docket CL-3877, Award 3842, are that the names of claimant are different and the amounts of time for which claims were made are different.

The compensation for service for each was computed under the same rule and theory, hence the decision in that docket and the opinion therein is controlling here. The controlling principles of the opinion therein are therefore adopted for the purposes of the decision herein.

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

The claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1943.