Award No. 4354
Docket No. CL-4361

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

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

(a) The Carrier violated, among others, Rule 61 of the Clerical Agreement when it called Messrs. I. W. Mays and R. S. Booten to perform work on Saturday afternoon, March 13, 1948, from 2:30 P. M. to 4:30 P. M. and refused to pay such employes under the Call Rule, and

(b) That they shall now be compensated for three hours at pro rata rate as provided in Rule 34, Section (a).

EMPLOYES' STATEMENT OF FACTS: Mr. I. W. Mays is regularly assigned as Clerk in the Blacksmith Office with hours of assignment from 8:00 A. M. to 12 Noon and 12:30 P. M. to 4:30 P. M., Monday to Friday, inclusive, and from 8:00 A. M. to 12 Noon on Saturday, it having been and being the practice for the employe assigned to this position to be off every Saturday afternoon.

Mr. R. S. Booten is regularly assigned as Clerk in the Back Shop Office, with hours of assignment from 8:00 A. M. to 12 Noon and 12:30 P. M. to 4:30 P. M., Monday to Friday, inclusive, and from 8:00 A. M. to 12 Noon on Saturday. There are several Clerks employed in this office and it has been and is the practice for the clerical employes employed in this office to be off Saturday afternoons with the exception of one clerk who is retained in the office to handle the small amount of work in connection with unusual situations which cannot be dispensed with altogether on Saturday afternoon.

In order to make effective the intent and purpose of the Saturday afternoon rule, it has been the practice at the beginning of each year to work out a Saturday afternoon schedule for that year showing the Saturday afternoon dates that each employe would work during the course of the year, it being understood that on all dates except those listed on the schedule the employes would be off. In this connection, we quote the Saturday afternoon schedule for the year 1948, as follows:

Childers	Villars	Lemon	Booten	Farriss	Crofts	Atkinson	Midkiff	Barnett
1-31	2- 7	2-14	2-21	2-28	1- 3	1-10	1-17	1-24
4- 3	4-10	4-17	4-24	5- 1	3- 6	3-13	3-20	3-27
6- 5	6-12	6-19	6-26	7- 3	5- 8	5-15	5-22	5-29
8- 7	8-14	8-21	8-28	9- 4	7-10	7-17	7-24	7-31
10- 9	10-16	10-23	10-30	11- 6	9-11	9-18	9-25	10- 2
12-11	12-18	12-24			11-13	11-20	11-27	12- 4"

require certain work to be done on Saturday afternoons, such as the distribution of checks on the day in question. The work involved was not work arbitrarily assigned, nor was it work which had accumulated as so-called overtime work. It involved the paying of employes on schedule. What situations require Saturday afternoon work in keeping with the spirit of the rule are certainly within the discretion of management and should not be disturbed unless shown to be arbitrary or capricious.

The fact should not be overlooked that claimants were paid for six 8-hour days each week under the basic day rule, Rule 29(a) reading:

"Rule 29—Hours of Service—Overtime—Meal Period.

(a) Except as provided in Rule 31, eight consecutive hours or less, exclusive of the meal period, shall constitute a day's work, for which eight hours' pay will be allowed. Time in excess of that on any day will be considered as overtime and paid on the actual minute basis at the rate of time and one-half."

In other words, on the day in question claimants were paid 8 hours for 5 hours' work. They are claiming 11 hours' pay for 5 hours' work. If the claim were sustained, employes working, for example, 5 hours on Saturday will receive more pay for that day than employes who are regularly required to work 8 hours on Saturday, it not having been the practice in many cases to give half holidays on Saturday afternoon. Nothing in Rule 61 so contemplates. That rule simply means that when the practice to give half-holidays has been in effect, such half-holidays will not be arbitrarily discontinued, but it specifically gives the carrier the right to require incumbents of such positions to work in emergencies on Saturday afternoons without additional compensation. The circumstances of March 13, 1948, were just such an emergency. To penalize the Carrier for using, in an emergency, an employe for one hour after having gratuitously given him Saturday half-holidays is certainly not the intent nor in the contemplation of Rule 61.

Actually two bases exist for denying the instant claim. (1) The circumstances involved constituted an emergency and, (2) no rule of the agreement provides for any additional compensation for work performed within the hours of a regular assignment. The above basic day rule provides for payment of the punitive rate for time in excess of 8 hours, while Rule 34 (a) provides for payment for work performed either before or after the "regular work period. The work in question was not in excess of 8 hours nor was it either before or after the regularly assigned hours, the assigned hours being 8:00 A. M. to 4:30 P. M. In other words, no basis exists under the rules for payment of additional compenstion for work performed during the regular work period and not in excess of 8 hours. Claimants were paid for 8 hours' work on Saturday, while they only actually worked 5 hours on the day in question—all within the regularly assigned work period.

If, therefore, no rule exists which requires payment of additional compensation under the circumstances herein set forth, the claim of the employes actually amounts to a request for a rule change or an increase in rate of pay and your Board has consistently refused to assume jurisdiction of such matters on the basis that such jurisdiction was not conferred upon the National Railroad Adjustment Board by the Railway Labor Act.

The employes have referred to several awards of your Board involving somewhat similar claims. It is the carrier's position that this case should be decided entirely on its own merits in accordance with the rules and past practice in effect on this carrier. It has always been the practice to require clerical employes who usually have a half-holiday on Saturdays to perform emergency work on Saturday afternoons within their assigned hours without additional compensation, and as no rule requires additional compensation for such work, the claim should be denied.

OPINION OF BOARD: Claimants are clerks regularly assigned 8:00 A. M. to 4:30 P. M., with a thirty-minute lunch period beginning at Noon. On Saturday, March 13, 1948, they left their respective offices at Noon but were notified

to return at 2:30 P. M. to work until 4:30 P. M. in order to distribute pay checks to shop craft employes at Huntington, West Virginia. Employes claim a violation of the Saturday Afternoon Rule and assert a right to compensation under Rule 34 (a) (Call Rule), which rules provide as follows:

Rule 61. Half Holiday Saturday.

"It is the policy of the Management to grant half-holiday Saturday.

"Where it has been the practice to grant half-holiday on Saturday, such practice will be continued, except in cases of emergency. Where it is necessary to maintain Saturday afternoon service, only such employes as are necessary to meet the requirements of the service will be worked, arrangements being made so that as many employes as possible will be given the benefit of the Saturday half-holiday."

Rule 34. Notified or Called.

"(a) Employes notified or called to perform work, either before or after, but not continuous with their regular work period shall be allowed a minimum of three hours at pro rata rate for two hours' work or less and if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis."

The reason for distribution of the pay checks to the employes in the Huntington shops is set forth with clarity on the record. It appears that regular pay days at Huntington are the 15th and 30th of each month, but when such regular pay days fall on a Sunday or holiday, pay checks are distributed on the preceding day. Second shift shop employes are paid on the day preceding the regular pay days, in order that they may have their checks prior to the closing hours of banks on the specified pay dates. It was in keeping with this practice that the Claimants were required to assist with the distributing of checks to such shop craft employes.

Carrier asserts that two bases exist for denying the instant claim: (1) The circumstances involved constituted an emergency and, (2) no rule of the Agreement provides for any additional compensation for work performed within the hours of a regular assignment.

In our opinion neither assertion of the Carrier is tenable. It is to be noted that there is no question concerning the existence of the practice of permitting Saturday afternoon off as has been the case in many denial awards of this Division where compensation has been sought for Saturday afternoons worked.

With respect to the question of violation of the Agreement, we think the Carrier has stated the heart of the issue, to wit: Did the circumstances here present constitute an emergency? An emergency has been previously defined in Awards of this Board. It has been said that it is suggestive of "a sudden occasion; pressing necessity; strait, crisis." "It implies a critical situation requiring immediate relief by whatever means at hand." The situation here involved does not qualify as an emergency under such definitions. Nor, do we believe that it so qualifies under the simple definition to be found in the Merriam-Webster Collegiate Dictionary, to wit: "An unforeseen occurrence or condition calling for immediate action; exigency." We don't think Carrier would want us to believe it had not foreseen that March 14, 1948, would fall on a Sunday. Even if the Carrier would have us so believe we would have to hold the occurrence was so clearly foreseeable that it (Carrier) was conclusively presumed to have foreseen it. Obviously, this was a situation which could have been provided for long in advance of its actual occurrence. In the light of this reasoning, we are impelled to hold that Carrier violated the Agreement.

With respect to the compensation to be awarded Claimants, there are many Awards of this Board which are authority for the proposition that the Saturday Afternoon Rule is a limitation both upon the definition of the work day as constituting eight hours and upon the hours of regular assignments, to the extent of the hours off on Saturday. The Claimants, in the light of this

limitation, were called to perform work not continuous with their regular work period and hence are entitled to be paid for such work in accordance with the provisions of Rule 34 (a).

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 the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.