

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

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

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated Rule 30 of the current Clerks' Agreement by requiring John F. Holland, Chief Yard Clerk at Mechanicville to work seven (7) days per week at pro rata rate of pay, and that

Mr. John F. Holland shall now be allowed the difference between what he was paid (pro rata rate) and overtime rate for all service performed on Saturdays and holidays subsequent to March 30, 1948.

EMPLOYES' STATEMENT OF FACTS: Mr. John F. Holland holds a regularly assigned position designated as Chief Yard Clerk at Mechanicville, New York on a seven (7) day per week basis and has been paid under the provisions of Rule 30 (c).

Under date of March 30, 1948 Mr. Holland filed a written request with the Division Trainmaster for permission to convert his assignment from a seven (7) day to a six (6) day per week assignment with Saturday as his regularly assigned day of rest.

The Division Trainmaster, in a letter addressed to Mr. Holland under date of April 21, 1948, denied Mr. Holland's request due to the fact that permitting the request would result in paying overtime in many cases.

POSITION OF EMPLOYES: There is in evidence an Agreement between the parties hereto bearing effective date of January 1, 1941 in which the following Rules appear:—

Rule 30. Sunday and holiday service.

(a) 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 falls on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half.

Employees necessary to the continuous operation of the Carrier who are regularly assigned to such service, will be assigned one regular day off duty in seven (7), Sunday if possible, and if required to work on such regularly assigned seventh (7th) day off duty, will be paid at the rate of time and one-half; when such assigned day off duty is not Sunday, work performed on Sunday will be paid for at straight time rate. When one of the specified holidays falls on the

intendent on October 13, 1948 and proceeded to handle the case through regular channels filing the final appeal with the highest officer of the Carrier designated to hear such cases on November 8, 1948. The final decision from the Carrier denying the claim is dated December 7, 1948.

CARRIER'S STATEMENT OF FACTS: John F. Holland has been employed as a yard clerk and Chief Clerk in yard office, Mechanicville, N. Y. working seven (7) days per week since December 11, 1922. Previous to that he held an extra yard clerk's position at that point.

POSITION OF CARRIER: Chief Clerk John F. Holland, working in the Mechanicville, N. Y. yard office, forwarded a letter to the Train Master, Susquehanna Division, Oneonta, N. Y., which was received under date of March 30, 1948, and read as follows:

"Respectfully request that position of Chief Clerk to Yard Master, Machanicville, be converted to a six (6) day assignment.

"When I bid on and was awarded this position in 1943, during the war years when there was a shortage of manpower, coupled with the fact that I had been working a seven-day position since my first service in 1922, the six-day feature of the position was not seriously considered.

"However, after much reflection, it is my desire that you grant me a regular assigned day of relief, preferably Saturday, as this day will not conflict with any other six-day positions.

"With the above purpose in mind, I respectfully ask for your full consideration of this matter."

The Train Master advised Mr. Holland under date of April 21, 1948:

"The present indications are that converting this position to a six-day basis would result, in many cases, in having to use you on your rest day; therefore, we prefer to continue this position on a seven-day basis for the time being."

The next heard of the matter was in a letter dated September 14, 1948 from the General Chairman of the Brotherhood of Railway and Steamship Clerks to the General Superintendent of Transportation, presenting the claims as outlined in Employees' Statement of facts. The General Chairman was advised that the established practice was for the Committee to submit the original claim to the department head under whom the employee worked.

On October 13, 1948, the General Chairman of the Clerks' Organization requested of the Superintendent of the Susquehanna Division, Oneonta, N. Y., the proper department head, that Holland's position be converted and that he be paid the difference between what he was paid (pro rata rate) and overtime rate for all service performed on Saturdays and holidays subsequent to March 30, 1948. Advice was furnished him on October 14, 1948 that Holland's position would be converted to six days a week but claim for time was denied.

On October 21, 1948, Holland's position was changed from seven to six days per week.

This case is similar to claim in Case No. 1648-C and the Carrier submits the same defense that there is no basis for claim for pay as request to convert position was granted as soon as Organization presented same to proper department.

OPINION OF BOARD: This is a companion case with Award No. 4628. The only material difference in the facts is that claimant was not the present incumbent of the position on January 1, 1941, the date Rule 30 of the Agreement became effective. Claimant applied for and was assigned the position of Chief Yard Clerk, Mechanicville, New York, in September 1943, at which time he said he desired to work the position seven days per week. Rule

30 (c) of the Agreement states * * * "When such a position is vacated, it will then be assigned on the basis of six (6) days, unless otherwise agreed to by the Management and the General Chairman."

The fact that claimant worked the position from 1943 to 1948 on the basis of seven (7) days per week is proof that claimant, General Chairman and Management had agreed to the position being worked on that basis, in accordance with Rule 30.

It is the opinion of the Board that the difference in facts between this case and Award No. 4628 is not material to the real issue. Award No. 4628 shall be followed, and for the reasons set forth in that Opinion, this claim shall be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of November, 1949.