

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 CHESAPEAKE & OHIO RAILWAY COMPANY
(Pere Marquette District)

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

(a) Carrier violated rules of our working conditions Agreement when during an assigned work-week period, October 20-26, inclusive—seven (7) days—it required L. C. Briggance, Clerk, Ludington, to work six (6) consecutive days, namely, Thursday, October 20—Tuesday, October 25th, inclusive, without a rest day.

(b) Mr. Briggance be compensated for services performed on Tuesday, October 25, 1949, at rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: Mr. Briggance is regularly assigned to position of Clerk at Ludington. His hours of service assignment is subject to rules of our working conditions Agreement with the Carrier, particularly those hereinafter mentioned.

On September 1, 1949, his regularly assigned hours of service was established by bulletin as a five-day per week position with Tuesday and Wednesday of each week as designated rest days. (Employees' Exhibit 1)

This condition of employment continued until October 18, 1949 on which date Management issued bulletin No. 21, (Employees' Exhibit 2) changing Mr. Briggance's assigned rest days of the week from Tuesday and Wednesday to Wednesday and Thursday, effective October 20, 1949. This required Mr. Briggance, during the 40-hour work week period commencing Thursday, October 20, to work six (6) consecutive days or from October 20 to October 25, inclusive in violation of Rule 25 of our working conditions Agreement.

Employees claim compensation for Mr. Briggance for service performed on the sixth day of his work week, namely, October 25, at the rate of time and one-half in accordance with Rule 25 (3) (c) of our working conditions Agreement hereinafter quoted.

Rule 25 (3) (c)

"Employees worked on more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where

was filed by the general chairman covering April 17 under the guarantee rule of the agreement. We contended that as the employe had worked six days in each calendar week, there had been no violation of the guarantee rule. The general chairman countered, however, with Awards 3923 to 3927, inclusive, of the Third Division, citing those decisions as supporting his position. We felt that had we worked the employe on Sunday, April 17, and through to Sunday, April 24, 1949, we would probably have been presented with a claim because of the employe having worked her seventh day but the general chairman assured us that the employe would have no claim on this account because she chose to remain on the position and accordingly assumed the conditions of it. With this understanding the claim was paid. A copy of the superintendent's letter of May 5, 1949, addressed to the general chairman, is attached, marked Carrier's Exhibit "B".

It will be readily apparent that the general chairman's claim in this docket is completely contrary to the attitude he took in the case above cited which occurred just a year ago.

In consideration of the facts related in the foregoing, the carrier respectfully requests that the Board deny this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made that Claimant should be compensated for his services on Tuesday, Oct. 25, 1949, at time and one half. The basis for the claim is that during Claimant's assigned work-week of Oct. 20 to 26, 1949, inclusive, Carrier required him to work six consecutive days, that is, from Oct. 20th to 25th, 1949, inclusive, without a rest day.

There is an agreement between the parties effective Aug. 1, 1947. This, as to certain rules, was revised effective Sept. 1, 1949, to conform to the agreement entered into by the parties at Chicago on Mar. 19, 1949, which provided for the establishment of a forty-hour week.

Pursuant thereto, effective Sept. 1, 1949, Claimant was assigned to a work-week Thursday through Wednesday, with Tuesday and Wednesday as his days of rest. The claim here arises out of the change in rest days of his assignment as set out in Bulletin 21. This Bulletin, dated Oct. 18, 1949, effective Oct. 20, 1949, changed the rest days of Claimant's assignment from Tuesday and Wednesday to Wednesday and Thursday. Claimant worked on each day from Oct. 20, 1949, to Oct. 25, 1949, inclusive, or six consecutive days.

There is nothing in revised Rule 17(b), effective Sept. 1, 1949, that requires an employe to exercise his seniority rights when a change is made in the rest days of his regular position. This is entirely optional. He is not thereby required to move to another assignment but can keep the one he has.

Whether you consider Oct. 20, 1949, the effective date of Bulletin No. 21 which fixes new rest days for the assignment held by Claimant or the assignment effective Sept. 1, 1949, the fact remains that during his work-week commencing on Oct. 20, 1949, Claimant worked six days or more than forty straight time hours.

Rule 25(3)(b), effective Sept. 1, 1949, so far as here material, provides: "Work in excess of forty straight time hours in any work-week shall be paid for at one and one-half times the basic straight time rate. . . ."

Rule 25(3)(c), effective Sept. 1, 1949, so far as here material, provides: "Employes worked on more than five days in a work-week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, . . ."

In view of the foregoing, particularly 25(3)(c) the claim must be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the provisions of the parties' agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of November, 1950.