

Award No. 5932
Docket No. CL-6019

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated rules of the Agreement, effective September 1, 1949, in compensation allowance to R. W. Parker, Fruit and Vegetable Inspector, Position No. 505, Fruit and Vegetable Dept., Kansas City, for services performed on Independence Day—July 4, 1950;

(b) Claimant, Mr. Parker, be paid for services performed in accordance with rules of the Agreement, viz.: a call or 5 hours and 20 minutes at the rate of time and one-half for services performed from 12:35 a.m. (time called for) to 1:55 a.m. (time of release) July 4, 1950, and similar allowance or call of 5 hours and 20 minutes at the rate of time and one-half for services performed from 5:00 a.m. (time called for) to 6:25 a.m. (time of release) July 4, 1950.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, R. W. Parker, is regularly assigned to Position No. 505, rate of pay \$13.73 per day, hours of service from 8:00 A.M. to 5:00 P.M., Fruit and Vegetable Department, Kansas City. His assignment is from Monday to Friday. Saturdays and Sundays are the designated rest days. On Independence Day, July 4, 1950, Mr. R. W. Parker received a call for 12:35 A.M. to make a fruit and vegetable inspection which work lasted until 1:55 A.M. Upon completion of this assignment claimant Parker returned home. On this same day the claimant received another call for 5:00 A.M. to make a fruit and vegetable inspection, the work lasted until 6:25 A.M. Upon completing this assignment claimant Parker returned home.

It is our contention that Mr. Parker should be paid for five (5) hours and twenty (20) minutes at one and one-half times the basic straight time rate for the call received at 12:35 A.M. on July 4, 1950, which is one of the designated Holidays listed in Rule 38(b); that he should also receive five (5) hours and twenty (20) minutes at one and one-half times the basic straight time rate for the second or separate call received at 5:00 A.M. on July 4, 1950. Claimant Parker was allowed compensation for one call only. The Management combined the two separate periods of service for pay purposes.

by one of our representatives when an investigation was made at the Railway Express Agency's Office in Kansas City on January, 1952, however, a further investigation was made on January 22, 1952 and it developed that on July 4, 1950 the employe of the Express Company who in the regular course of his duties would notify our Inspector of inspections desired, worked three and one-half hours overtime. We merely furnish this information so that the record will be correct, but we do want it distinctly understood that the mere fact that this Express Agency employe who performed overtime work did not do so the purpose of calling out our Inspector.

Now, with regard to the various letters from the Employees as well as the Statement of Claim submitted to your Honorable Board by Grand President Geo. M. Harrison, the claim is based very definitely on the Employees' conclusions that two separate calls were made in order for our Inspector to make these two inspections. In fact, in paragraph (b) of the Statement of Claim, specific reference is shown to "time called for." Now as to the validity of the claim based on the purported two calls which we reiterate is of no significance insofar as the application of paragraph (c) of Rule 35 of the Agreement is concerned, because, as we have stated, the rule in question is confined to "work performed," and not the number of calls.

Employer's Exhibit No. 14, which is a letter signed personally by Mr. C. C. Moore, Superintendent, Railway Express Agency, Kansas City, Missouri, contains positive information as to the procedure followed by the Railway Express Agency employes when inspections of carloads of perishable freight are required by employes of this Bureau. In Mr. Moore's letter he makes the definite statement that when his representative telephoned, he knew hours in advance of the arrival of passenger trains which contained the two carload shipments of perishable freight involved in this claim which required inspection. He also states that insofar as the two cars, viz., REX 491 and REX 1216 are concerned, the records of the Railway Express Agency do not disclose that two separate and distinct calls were made to the Claimant. He further states it is the practice where cars arrive within a reasonable period of time between the arrival of one carload and the arrival of the second carload to give one notification of the arrivals to our representative so that he will be informed in advance of the shipments on which inspections are required.

It is our considered judgment that the Employees are laboring under two erroneous premises insofar as this claim is concerned. First they maintain that for each and every call that is made on Sundays or legal holidays, we are obligated to compensate our employes on the basis of five hours and twenty minutes at the rate of time and one-half. This is not borne out by the very definite language contained in the rule in question. Secondly, they claim that two separate calls were made which has not up to this time been supported by any documentary evidence. On the contrary, the procedure expressed by Mr. Moore in Employer's Exhibit No. 14, dispels this assertion.

Insofar as the holiday work performed by Claimant Parker on July 4, 1950 is concerned, the record shows that he actually worked a total of two hours, forty-five minutes, for which he was paid five hours and twenty minutes at time and one-half. This, we are convinced is strictly in accordance with the provisions of our Rule 35, paragraph (c) and we sincerely request that when your Honorable Board considers the facts as herein presented you will render decision declining the Employees' claim.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 4, 1950, a holiday under Rule 48 (b) of the current Agreement, R. W. Parker, Fruit and Vegetable Inspector, Position No. 505, Kansas City, Missouri, was "notified or called" under Rule 35 (c) and made an inspection of Car REX 491 containing perishable cherries. This inspection started at 12:35 A. M. and was completed at 1:55 A. M.

Later, on the same day and pursuant to the Carrier's direction, he inspected Car REX 1216 containing grapes. The inspection of this car commenced at 5:00 A. M. and was finished at 6:25 A. M. For the foregoing inspection service the Carrier paid Parker on a minimum one notification or call basis of 5 hours and 20 minutes at the time and one-half rate. The claim is for two separate calls on the basis of 5 hours and 20 minutes for each call at the rate of time and one-half.

There is some dispute between the parties about the call or calls made to obtain Parker's services on the date in question, the Organization contending he was called and notified to report for work on two separate occasions and the Carrier insisting he was called but once. We are inclined to the view the record supports the Organization on this point but are not disposed to labor it as we do not deem the determination of that factual question absolutely necessary or essential to a decision of the single issue involved. For our purposes we shall assume two separate calls were made and received.

The Organization predicates the claim and its right to a sustaining award upon Rule 35, entitled "Notified or Called," particularly subdivision (c) thereof which reads:

"Employee notified or called to perform work on Sunday or a specified holiday, as referred to in Rule 38, will be allowed five hours and twenty minutes at the rate of time and one-half for four hours' work or less. Employee worked in excess of four hours will be allowed a minimum of eight hours at the rate of time and one-half."

The gist of all contentions advanced by the Organization, is that under the provisions of Rule 35 (c) an employee twice notified or called to perform work on a holiday is entitled to be paid for the calls on the minimum basis specified in such rule. The burden of the Carrier's argument is that under such rule an employee notified or called to perform work on a holiday is only entitled to receive 5 hours and 20 minutes at time and one-half if he works less than 4 hours even though he is notified or called on two separate occasions. Neither party cites Awards to sustain its position. In that situation we assume they have been unable to find any which do so.

No useful purpose would be served by detailing the arguments advanced by the parties in support of their respective positions. It suffices to say we have read the record, examined pertinent provisions of the Agreement and considered the arguments, and have concluded the Organization's position the rule can be construed as allowing two calls where—as here—Parker was called twice but actually performed less than 4 hours work, cannot be upheld. The rule specifically provides what an employee notified or called on a holiday shall receive for 4 hours' work or less on that day and is wholly silent on the subject whether more than one call affects the pay allowance to which he may be entitled. Of a certainty it makes no express provision for the pyramiding of pay on the basis of calls made and received. Under the circumstances if that is desired we think it should be procured by negotiation not through a strained or unwarranted construction of the contract. It follows the claim must 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 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 did not violate the Agreement as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of September, 1952.