

Award No. 6182
Docket No. CL-6173

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the Rules of the Clerks' Agreement at Meadville, Pennsylvania, when on September 1, 1949, and subsequent dates the Carrier failed and refused to compensate Employee R. J. O'Grady at time and one-half rate for services performed on his rest days, in addition to the monthly rate of his position, and,

That the Carrier shall now compensate Employee O'Grady for eight (8) hours at time and one-half rate in addition to monthly rate for all service performed on rest days he was required to work subsequent to September 1, 1949, and until violation complained of is corrected (File 915).

EMPLOYEES' STATEMENT OF FACTS: Ticket Agent Position at Meadville, Pennsylvania is designated as an X-3 position subject to certain rules of the Clerks' Agreement, specified in Memorandum of Agreement dated May 23, 1950. Prior to September 1, 1949, this position worked seven (7) days per week, nine (9) hours per day and position was paid a monthly rate comprehending such service or 274 hours per month. Effective with the 40 Hour Week Agreement this position worked seven days per week and eight hours per day. Claim was filed with the Forty Hour Week Committee, which resulted in Decision #9 of that Committee, in which the Committee held that all of the money rules of the Clerks' Agreement applied to X-3 positions. Accordingly the position of Ticket Agent, Meadville, Pa., was subject to the hours of service, overtime and other Rules of the Clerks' Agreement. As a result of Decision #9 a Memorandum of Agreement was reached with the Carrier which resulted in establishing a monthly rate comprehending 35 overtime hours in addition to 169-1/3 pro rata hours, which made up the monthly rate. Mr. O'Grady the Ticket Agent, had been required to work seven days per week, and in arriving at the compensation due him, Carrier applied service on his regularly assigned rest days against the overtime hours comprehended in the work week and hours per month of the monthly rate.

In the conferences that resulted in the Memorandum of Agreement dealing with X-3 positions, the overtime hours included in the monthly rate paid on X-3 positions, were to be worked on the work days of the work week as specified in Rule 20-2, paragraph (a). Rest days and holidays were not included or considered during the conferences that led up to the adoption of the Memorandum of Agreement.

above table." This being true, there is no room for interpretation, the meaning and intent are clearly spelled out as contended by the Carrier.

The Carrier has established that the Memorandum Agreement here disputed was consummated in good faith on its part after considering and weighing all of the facts hereinbefore stated, and with full and complete understanding that the comprehended overtime hours would apply to any and all overtime worked during any one month. If the Employees are permitted to repudiate one Memorandum Agreement what is to stop them from repudiating any other agreement? They should not be permitted to escape their responsibility or to unjustly enrich themselves at the expense of the Carrier. The Carrier submits that it would not agree to the proposition now contended for by the Employees.

The Carrier has also established that there has been no violation of any agreement and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier submits that the claim is without merit and should be denied.

All of the information herein has been discussed with or is known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: (1) The Organization states that the Carrier violates the rules of the Clerks' Agreement at Meadville, Pennsylvania, when on September 1st and subsequent dates, it failed and refused to compensate Employee R. J. O'Grady at time and one-half rate for services performed on his rest days, in addition to the monthly rate of his position; (2) That the Carrier compensate the claimant for eight (8) hours at time and one-half rate in addition to monthly rate for all service performed on rest days subsequent to September 1, 1949.

There is in evidence an Agreement between the parties bearing effective date of December 1, 1943, amended July 1, 1945; revised to conform to the so-called National 40-Hour Work Week Agreement effective September 1, 1949, by Supplemental Agreement dated July 20, 1949, and Memorandum of Agreement dated May 23, 1950, and Memorandum of Agreement dated February 23, 1951.

Under the Memorandum Agreement of May 23, 1950, on certain positions known as X-3 positions, which were monthly rated, the monthly rate was arrived at by agreement of the parties in this dispute.

This claimant's monthly salary was arrived at by taking a basic 169-1/3 pro rata hours and adding thereto 35 overtime hours figured at the time and one-half rate to arrive at a monthly salary of \$351.03. This monthly salary was received by the claimant whether or not he worked the 35 overtime hours; if, however, the claimant worked more than 35 overtime hours, he received additional compensation at the end of the month at the time and one-half rate.

The Organization contends that the 35 overtime hours contemplates only overtime on the work days per week and hours per month and does not include overtime hours worked on rest days or on holidays.

The Carrier contends that this Memorandum Agreement contemplates any and all overtime of 35 hours or less monthly in addition to the 169-1/3 pro rata hours.

The Carrier states that this monthly rate was given to this claimant in order to adjust a reduction in his salary by the application of Rule 33 (c);

that the overtime hours were added to the pro rata hours to maintain his monthly salary. The Employees state that the Carrier needed this claimant to work the 35 overtime hours in order to properly fulfill his duties.

Rule 33 (c) reads as follows:

"(c) Where the regular hours of an assignment are in excess of 204 per month multiply monthly rate by 12 and divide by the regular assigned annual hours to arrive at the hourly rate. To arrive at the daily rate for such positions multiply the hourly rate by the regular daily hours of the assignment."

The Memorandum Agreement provides for overtime as follows:

"Overtime worked in any one month in excess of the overtime hours as shown in the above table will be paid for, in addition to the monthly rate, at time and one-half and included in the last payroll period for the month in which worked."

This provision provides for a monthly accounting of overtime worked, in excess of the amount of overtime contemplated in arriving at the monthly salary.

Rule 20-3 (a), (b) and (c) reads as follows:

"(a) Time in excess of eight (8) hours on any day, exclusive of meal period will be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"(b) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 20-2. (Work Week Rule).

"(c) Employees worked on more than five (5) 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 such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 20-2 (Work Week Rule)."

From a careful reading of the docket and the Memorandum Agreement of May 23, 1950, and the Memorandum Agreement of February 23, 1951, and the Rules applicable to the 40-hour week, we find no limitation to the effect that the 35 hours of overtime used in arriving at this claimant's monthly salary must be worked during his 40-hour week and that he be compensated additional overtime for work performed on his rest days and holidays. Thus we find this claim to be without merit.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.