Award No. 6656
Docket No. CL-6529

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

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

ATLANTA JOINT TERMINALS

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

(a) Carrier violated the controlling Agreement between the parties on December 12, 1949, and subsequent thereto, when it failed and/or refused to compensate Extra Clerk E. C. Guthrie and others at the rate of time and one-half for second eight (8) hour shift worked within a twenty-four (24) hour period from their previous starting times instead of the straight time rate; and

(b) That Extra Clerk Guthrie and all others adversely affected shall now be compensated for the difference between that which they received on December 12, 1949 and subsequent dates at the straight time rate, and the amounts they should have received had they been paid time and one-half therefor; and

(c) That all employes adversely affected by this violation be paid interest at the rate of 6% per annum on all monies withheld because of this violation as a penalty in order to insure proper compliance with the controlling Agreement; and

(d) That claim shall date from December 12, 1949 and run subsequently thereto until the Agreement is properly applied under similar circumstances; and

(e) That the Carrier's records be promptly checked by the parties for the purpose of ascertaining the names of those employes who have been adversely affected by the violations on subsequent dates on which the violations occurred.

EMPLOYES' STATEMENT OF FACTS: On September 1, 1949, Mr. E. C. Guthrie was in the employ of the Atlanta Joint Terminals at its Yard Office working under the Superintendent of Terminals, Mr. W. E. Plunkett, and was shown on the roster of July 1, 1949 and January 1, 1950 as Extra Clerk. See Employes' Exhibits "A" and "B."

On December 12, 1949, December 13, 1949 and December 16, 1949 Extra Clerk Guthrie signed the time sheet for eight hours at the overtime rate for the reason that he had worked sixteen hours within a 24-hour period on the dates in question. All overtime was disallowed by the Superintendent of

same until we have the opportunity of reviewing the employes submission, as to date we have been furnished very little information as to nature of claim and exactly what is involved.

The only data contained herein that has been made available to Petitioner is our letter August 6, 1952.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 12, 13 and 16, 1949 Claimant filed claims for overtime work performed by him on those days. On December 14 and 21, 1949 the Superintendent denied the claims.

The claims then lay, denied and dormant, for 32 months until August 4, 1952 when the General Chairman took an appeal to the Director of Personnel.

The Director of Personnel declined to consider the claims "at this late date," observing that "they should have been handled more promptly by the representative of the Organization."

Thereupon on September 4, 1952 the General Chairman protested the decision of the Director of Personnel, restated the claim so as to make it a continuous running claim with interest at 6% per annum and to include all others adversely affected. This letter concluded with the statement that, if the claims were not allowed within 30 days, the letter would "serve as formal notice of our intention of appealing claim as here presented to the Third Division." To this letter the Carrier made no response.

On the merits, the claim asserts a violation of Rule 38 as to which the position of the Carrier is and has been that extra employes are entitled to no more than straight time for work in excess of eight hours on any day.

First. The phrase "time in excess of eight (8) hours, exclusive of the meal period, on any day" in Rule 38 (a) means a period of 24 hours from the starting time of the first assignment" (Awards 687, 2030, 2340, 2346, 2484, 2887, 3258, 5051, 5414, 5796, 6017 and 6563); and the assignments worked by Claimant Guthrie as an extra employe did not involve "moving from one assignment to another or to or from an extra or furloughed list" within the meaning of the exception created by Rule 38 (b) (Awards 5494, 5795 and 6382).

There is nothing uncertain, indefinite or ambiguous about the Rule and evidence of contrary practice is therefore unavailing to vary its plain meaning (Awards 5494, 5795 and 6382).

Second. With the exception of the payment of one overtime claim in 1946 the record establishes a 20 year practice of paying straight time in situations such as those presented by this claim. While this evidence of practice cannot prevail over the Rule, such acquiescence may bar specific claims (Awards 3518, 3231, 2623, 2576, 2261, 2146, 2137, 2126, 1645 and 1289).

Moreover, decisions of this Board have gone so far as to deny claims for unreasonable delay in pressing them to a conclusion even though neither the Railway Labor Act nor the Agreement contains any cut-off or limitation provision (Awards 3778 (3 years), 4941 (3 years), 5190 (3 years) and 6229 (2 years)). The delay of 32 months here was unreasonable and the continuous running nature of the claim has made the delay prejudicial to the Carrier.

No useful purpose will be served by denying the claim and leaving the essential dispute on the merits unresolved. The long continued acquiescence in the violation of the Rule coupled with the unreasonable delay in pressing this claim to a final conclusion should bar any monetary claims to the date of this award (Award 5013).

Third. It is true that the claim as originally presented was amended *after final denial by the Director of Personnel to make it a continuous* running claim and to include all others adversely affected. The violation of Rule 38 was the subject matter of the claim. The fact that the reparations asked for the alleged violation may have been amended did not change the identity of the subject of the claims (Awards 3256, 5330 and 5700). Moreover, in view of the conclusions reached here upon the monetary aspects of the claim, no prejudice to the Carrier is apparent. The claim of variance is, therefore, 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 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

Rule 38 of the Agreement was violated. Monetary claims to the date of this award are barred by acquiescence and delay.

AWARD

Item (a) sustained;

Item (b) sustained effective with the date of this award;

Item (c) denied;

Item (d) denied;

Item (e) sustained to the extent of a check for the purpose of ascertaining the names of those employes of similar class who have been similarly affected by the violations effective with the date of this award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.