Award No. 7084

Docket No. CL-7039

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Eunice, La., by failing and refusing to include the Saturday and Sunday assignment of position No. 1705 in a regular relief position. Also

(b) Claim that the occupant of position No. 1705 be paid a minimum of eight (8) hours at the rate of time and one-half for each Saturday, December 5, 1953 through March 7, 1954.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949 and subsequent to March 7, 1954 position No. 1705 was assigned and worked 365 days annually.

When the forty hour work week became effective September 1, 1949 Carrier reduced the assignment to 254 days annually.

From September 1, 1949 until December 5, 1953 the Saturday, Sunday and holiday work of position No. 1705 was required to be performed by clerical employes.

limited amount of service performed on his rest days he was called, used and compensated in accordance with Rules 37 (b-5), 37 (b-6) and 43, supra.

At the risk of being redundant may we in conclusion again respectfully suggest that the Carrier's eventual establishment of the Porter-Trucker position on a seven-day basis not be misunderstood or misinterpreted. The action was not, as has previously been stated and confirmed by appropriate authority, due to any contractual obligation. On the contrary that action was prompted primarily by a desire to dispose of this controversy. And while it cannot, from a strictly monetary standpoint, be viewed as a generous concession since the Carrier was, on the call basis, paying fifteen straight-time hours, whereas, when established on a seven-day basis and placing the position in a pool for relief purposes the required payment was but one additional hour, or a total of sixteen straight-time hours, at the same time, under the circumstances here existing, one cannot escape the realization and obvious conclusion that the Carrier's action was one of administrative cooperation beyond that which it was contractually required to go.

In the interest of consistency, and in recognition of the plain provisions and obviously intended application of the applicable and governing rules of the agreement hereinbefore cited, it is the position of Carrier that claimant has been properly compensated; and, this being so, the Employes' contention should accordingly be dismissed and the accompanying claim unqualifiedly denied.

Without prejudice to our position that the Agreement does not authorize any payment at all in this case, the Carrier desires to protest a punitive payment even if it should be held that the position should have been a seven-day one. If it had actually been a seven day position the Saturdays would have been pro rata days and this claimant has not performed service for the additional time and one-half pay sought. In a long line of awards, including 2346, 3232, 3504, 4037, 4616, 4828, 5200, 5476, 5607 and 5887 your Board has ruled that the right to perform work is not the equivalent of work performed insofar as the overtime rule is concerned. Not more than the difference between 8 hours pro rata and payment already made could be justified even it should be held that the Agreement was violated.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced)

OPINION OF BOARD: From December 5, 1953 through March 7, 1954 the claimant was assigned a regular recurring call on his Saturday rest day to handle mail and baggage on and off Trains 3 and 4 at Eunice, La. He was paid a minimum call of two hours at time and one-half.

Rule 37(c-5) was adopted as part of the 40-Hour Week Agreement, effective September 1, 1949. It provides as follows:

> (c-5) Service on Rest Days. Service rendered by employes on assigned rest days shall be paid for under Rule 43 unless relieving an employe assigned to such day in which case they will be paid eight (8) hours at the rate of the position occupied or their regular rate, whichever is higher.

Certain disputes as to rest day service resulted in Decision No. 5 of the 40-Hour Week Committee, which so far as pertinent reads as follows:

> "First, that service rendered by an employe on his assigned rest day will be paid for under applicable call rules.
>
> Second, that such rights as the Carriers had prior to September 1, 1949, to make the regularly recurring calls or part time assign-

ments on rest days will continue to exist on and after September 1, 1949,except that such rights are thereafter extended to two rest days, whereas they formerly applied only to one."

The call rule in this case reads as follows:

"RULE 43. NOTIFIED OR CALLED

(a) Except as provided in Paragraph (b) of this rule, employes notified or called to perform work not continuous with, before or after the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on a minute basis.

(b) Employes who are called regularly on Sundays and specified holidays shall be allowed a minimum of eight (8) hours at time and one-half rate."

That rule establishes the minimum pay allowance for three situations, to-wit, (1) employes called to work not continuous with but before or after their assigned hours, (2) employes called sporadically on Sundays or Holidays, and (3) employes called regularly on Sundays or Holidays. Since Sundays were generally the one rest day prior to September 1, 1949, referred to in Decision No. 5 of the 40-Hour Week Committee, it appears that under such decision the Sunday provisions of the call rule governing regularly recurring calls apply to both rest days, which are Saturday and Sunday in this case. Since the service here involved falls within situation No. 3 above, governed by Rule 43(b), 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 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

The agreement was violated

AWARD

Claim sustained but with deduction of amounts previously paid for service on the Saturdays involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.