Award No. 7202
Docket No. CL-7143

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

Carrier violated the Clerks' Agreement when it required employes assigned to monthly rated "c" and "d" positions to work in excess of the average number of hours comprehended by the monthly rate without additional compensation.

Carrier shall compensate all such employes affected for 1 1/3 hours each month or a total of 16 hours for the year of 1953 at the penalty rate of their respective positions.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains at various points on the railroad a number of positions which because of the nature of the duties, are excepted from certain rules of the Agreement. Those positions are identified as "c" and "d" positions dependent upon the extent the positions are covered by the rules of the Agreement.

The monthly rate applied to such positions comprehends an average of 169 1/3 hours per month.

To arrive at the average number of hours comprehended by the monthly rate, the rest days consisting of 52 Saturdays and 52 Sundays, and the seven (7) specified holidays, or 111 days, are deducted from the total number of days in the year. Thus, in a year of 365 days, after deducting the Saturdays, Sundays and holidays, there remains 254 days which are work days. This figure multiplied by eight (8), which represents the number of hours worked each day, amounts to a total of 2,032 hours for the year. Two thousand thirty-two (2,032) hours divided by the number of months of the year, 12, amounts to 169 1/3 hours, which is the average number of hours the monthly rate comprehends.

In the year 1953, the hours worked exceeded the number of hours which the monthly rate comprehends.

For example, in the year 1951, which was a year of 365 days, and in which none of the holidays fell on Saturday, an employe occupying a "c" or

As your Honorable Board has often stated, it is not the function of the Board to render awards in such a way as to write new rules but rather to interpret the rules as they exist. As the Carrier has pointed out, there is no existing schedule rule which supports the claim in this instance that several hundred employes be paid an additional 16 hours for work which they performed within their regularly assigned hours.

We submit that the monthly rates of Rule 1 (c) and 1 (d) positions were computed exactly in conformity with the provisions of Rule 15 (b) and 15 (g), there is no schedule rule support for the claim which has been presented and we respectfully request that it be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced)

OPINION OF BOARD: The confronting claim concerns a group of positions classified as (c) and (d) under the effective Agreement. It is alleged that the occupants of these positions worked 1 1/3 hours monthly (or 16 hours annually) in excess of the total number of hours comprehended by Rule 15 (b), and request is made that reparations be ordered paid, at the punitive rate, to all employes affected.

Rule 15 (b) provides:

> "(b) Employes occupying positions listed in Rule 1 (b), 1 (c) and 1 (d) will be paid on a monthly basis. In applying monthly rate to employes occupying positions listed in Rule 1 (c) and 1 (d), the monthly rate will comprehend an average monthly assignment of 21 1/6 days or 169 1/3 hours. The overtime rate for work performed by employes occupying positions listed in Rule 1 (c) and 1 (d) will be computed on the basis of one and one-half times the straight time hourly rate determined by dividing the monthly rate by 169 1/3. The computation for each payroll period will be made on the basis of one-half of the monthly rate, except in a month when the occupant of the position changes."

The figure of 169 1/3 hours set forth in the above quoted rule as the comprehended average monthly assignment is arrived at by deducting the sum total of Saturdays, Sundays and holidays (111 in number) from the 365 days in a year, leaving 254 working days in a calendar year; eight hours constitute a work day, thus 2,032 working hours annually result in a total of 169 1/3 hours per month.

We are here concerned with the year 1953. Two of seven designated holidays occurred on Saturday, a rest day for the employes concerned.

The Organization contends that, in view of the fact the employes received only 109 days off instead of 111 days as they were entitled to within the meaning of 15 (b), those concerned were entitled to be compensated for such loss.

The respondent in substance asserts that Rule 15 (b) has reference to an average assignment; and that as such was not intended to serve as an annual guarantee whereby an employe who worked more than 254 days per annum (adjusted on the basis of 169 1/3 hours monthly) would be paid for any day in excess of 254 days or any hours in excess of 169 1/3.

Rule 15 (b) contemplates two pay periods monthly, computed on a monthly basis. The rule does not specify a specific work month of either 21-1/6 days or 169 1/3 hours, rather it states that the monthly rate will comprehend a monthly assignment that will "average" such specified periods.

The record reveals that no contention is advanced that employes worked other than a 40-hour week consisting of five 8-hour days. The rule requires

only that a monthly rate be paid for all service performed within a month. The hourly rate can be arrived at by dividing the monthly rate by 169 1/3. The recited hours in the rule are indicative of the average, not the maximum, to be worked monthly.

There is nothing in the rule that can be properly construed as requiring payment of compensation, over and above the monthly rate specified, on or for those occasions when a holiday falls on a rest day.

This claim is 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 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

That the Carrier did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1955.