

Award No. 8078
Docket No. CL-7695

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

BESSEMER AND LAKE ERIE RAILROAD COMPANY

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

(1) Carrier violated the current Agreement, effective June 15, 1938, revised to and including April 1, 1953, when it compensated Yard Clerk B. D. Hawley at Conneaut, Ohio, for eight (8) hours at the pro rata rate for work performed on the sixth day of his work week, i.e., Sunday, May 23, 1954, instead of the rate of time and one-half in accordance with the provisions of the Agreement, and

(2) Carrier shall now pay Claimant Hawley the difference between the amount paid at the straight time rate of his regular assignment and the amount he should have been paid at the rate of time and one-half for eight hours in accordance with the controlling provisions of the Agreement. (Case 536)

EMPLOYEES' STATEMENT OF FACTS: Prior to May 23, 1954, Clerk B. D. Hawley was regularly assigned to a yard clerk's position in Carrier's facilities at Conneaut, Ohio, with an assigned work week of five days, from Tuesday through Saturday, with Sunday and Monday as his two consecutive days of rest.

Claimant was notified by the Carrier that effective Sunday, May 23, 1954, his rest days were being changed from Sunday and Monday to Monday and Tuesday. Consequently, as a result thereof, he worked as follows:

May 11	12	13	14	15	16	17
Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Mon.
W	W	W	W	W	Off	Off
May 18	19	20	21	22	23	24
Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Mon.
W	W	W	W	W	W	Off

For the work performed on the sixth day of the work week, on Sunday, May 23, 1954, Claimant was paid at the straight time rate instead of the proper rate of time and one-half.

The Carrier holds that, under the provision of Rule 39(a), which is quoted in this Carrier's statement of facts, when the rest days of a position are changed, the employe affected has the right to either take the new assignment or exercise his seniority rights to any position held by a junior employe. When the rest days of Mr. Hawley's position of yard clerk at Conneaut, Ohio were changed effective Sunday, May 23, 1954, and he elected to remain on the position, he started to work on a new assignment and his work on that new assignment could not be tied in any way to his former assignment. There is no basis for the claim for time and one-half payment for work on a regularly assigned work day.

The Carrier's position in this case is supported by the Third Division, National Railroad Adjustment Board Award No. 6211, Docket No. CL-6230, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes vs. Southern Pacific Company (Pacific Lines) with Referee Curtis G. Shake participating, which denied a claim for time lost when rest days were changed. Also, Third Division, National Railroad Adjustment Board Award No. 6281, Docket No. TE-6212, the Order of Railroad Telegraphers vs. the Southern Railway Company with Referee Adolph E. Wenke participating, which denied a claim for time and one-half rate in a similar case on the basis that claimant's old work week ended after he had completed his work the day before his rest days were changed and his new work week started on the effective date of the change. Therefore, he performed no work on rest days.

This dispute has been handled in the usual manner up to and including the Chief Operating Officer of the Carrier as prescribed by the Railway Labor Act. All data submitted in support of the Carrier's position were presented to the employes and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant B. D. Hawley was regularly assigned as Yard Clerk at Conneaut, Ohio with rest days of Sunday and Monday. He was properly given advance notice per Rule 39 (c) that effective Sunday, May 23, 1954, his assigned rest days were being changed to Monday and Tuesday. Claimant worked six consecutive days from Tuesday, May 18 through Sunday, May 23, and was off the following day. Claim is made that Hawley was entitled to overtime, instead of pro-rata rate, for working on Sunday, May 23, which assertedly was the sixth day of his work week. Carrier responds that by electing to remain on the position after the change in rest days Claimant accepted a new assignment in which Sunday, May 23, was a regular work day.

The interpretation expressed in Awards 7319 and 7320 is deemed controlling in this case. Carrier's action here changed Claimant's work week but not his assignment. His new work week did not begin until Wednesday, May 26. Thus Sunday, May 23 was the sixth day of his work week at the time, and the overtime rate was applicable for work performed on that date.

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1957.

DISSENT TO AWARD 8078. DOCKET CL-7695

For the reasons outlined in our Dissent to **Award 8077**, Docket **CL-7694**, we dissent.

/s/ C. P. Dugan
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp