

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 4-A-2(c), and Article II, Section 1, 2(a), and 5 of the Agreement of August 21, 1954, by failing to pay an additional day's pay at time and one-half for services performed on Tuesday, September 7, 1954, by various employees at various locations, Lake Division.

(b) Certain named claimants be allowed an additional day's pay at time and one-half for services performed on Tuesday, September 7, 1954. (Docket C-757)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case hold positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants in this case are the incumbents of regular positions of Clerk at various locations on the Carrier's Lake Division, with the exception of one who is the incumbent of a position of Laborer. The names of the claimants, titles of positions and places of employment are as follows:

Name of Claimant	Place of Employment
Rudolf Freiter, Clerk	Kinsman St., Trainmaster, Cleveland, O.
Charles Pero, Laborer	Holton St., Cleveland, O.

Under this view, the most the hourly-rated Claimant would be entitled to would be the payment of the overtime instead of the straight time rate for the work performed on the day in question, and not pay for the holiday as such and in addition pay at the overtime rate, all of which he claims.

In summary, the Carrier's position is that the provisions of the Agreement of August 21, 1954 are in conflict with and therefore supersede the provisions of Rule 4-A-2 (c). Alternatively, even if Rule 4-A-2 (c) survived the adoption of the Agreement of August 21, 1954, it continues to apply, as before, only to the determination of the rate of pay for work performed on the day here in question, and does not apply to the determination of the rate of pay for holidays as such. In either event the present claims should be denied.

III. Under the Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this dispute would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that the Agreement does not provide for the compensation requested by the Claimants in this dispute.

It is respectfully submitted, therefore, that the claim here before your Honorable Board should be denied.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Section 1, Article II of the August 21, 1954 Agreement is not applicable to this dispute.

Under Agreement Rule 4-A-2(c), the claimants are entitled to the difference between the straight time paid and time and one-half for the work performed on September 7, 1954. The claims will be sustained to that extent only. (Awards 7722, 8320, 8506, 8507.)

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 claims are sustained to the extent indicated in the opinion.

AWARD

Claims sustained and denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of November, 1958.