

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

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

ALABAMA, TENNESSEE AND NORTHERN RAILROAD

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

(1) The Carrier violated the terms of the currently effective Agreement between the parties when it failed and refused to consider in any manner or to hold in abeyance justifiable claims of six employees under the rules of the Agreement.

(2) That L. F. Haight shall now be paid the difference between a minimum of 8 hours at time and one-half and what he was paid for services performed on his rest days or holidays as per attached statement designated as Employees' Exhibit 1 (a).

(3) H. O. Tillotson, Clerk, Mobile, Alabama shall now be paid the difference between a minimum of 8 hours at time and one-half and what he was paid for services performed on his rest days or holidays as per attached statement designated as Employees' Exhibit 1 (b).

(4) B. T. Hodges, Sr., shall now be paid the difference between a minimum of 8 hours at time and one-half and what he was paid for services performed on his rest days or holidays as per attached statement designated as Employees' Exhibit 1 (c).

(5) W. C. Coleman shall now be paid the difference between a minimum of 8 hours at time and one-half and what he was paid for services performed on his rest days or holidays as per attached statement designated as Employees' Exhibit 1 (d).

(6) B. A. Hicks, Utility Clerk-Typist, Mobile, Alabama, shall now be paid the difference between a minimum of 8 hours at time and one-half and what he was paid for services performed on his

rest days or holidays as per attached statement designated as Employees' Exhibit 1 (e).

(7) Andrew Purnell, Trucker, Mobile, Alabama, shall now be paid the difference between a minimum of 8 hours at time and one-half and what he was paid for services performed on his rest days or holidays as per attached statement designated as Employees' Exhibit 1 (f).

EMPLOYEES' EXHIBIT 1 (a)

ALABAMA, TENNESSEE AND NORTHERN RAILROAD COMPANY

IN ACCORDANCE WITH SECTION 2, ARTICLE V, OF THE
AGREEMENT OF AUGUST 21, 1954 (RULE 44b)

DATE WORKED	HOURS WORKED	PUNITIVE HOURS MIN.	BALANCE CLAIMED PUNITIVE	RATE
4/15/51	2	8	6	1.9250
5/26/51	5	8	3	2.2025
8/ 4/51	5½	8	2½	2.2278
8/12/51	6½	8	1½	2.2278
9/22/51	6	8	2	2.2278
9/23/51	5	8	3	2.2278
9/29/51	5	8	3	2.2278
9/29/51	5	8	3	2.2278
10/ 6/51	6½	8	1½	2.2278
10/13/51	7½	8	1½	2.2278
10/20/51	6	8	2	2.2278
12/23/51	4	8	4	2.2278
1/27/52	4	8	4	2.2278
6/14/52	3	8	5	2.4506
7/12/52	3½	8	4½	2.3025
8/ 2/52	3	8	5	2.3025
8/10/52	3	8	5	2.3025
8/24/52	3	8	5	2.3025
9/28/52	6	8	2	2.3025
10/19/52	5½	8	2½	2.3325
8/ 1/53	5	8	3	2.6400
8/ 8/53	4	8	4	2.6400
9/12/53	6	8	2	2.6400
8/21/54	4½	8	3½	2.6850
8/28/54	4½	8	3½	2.6850

EMPLOYEES' EXHIBIT 1 (b)

ALABAMA, TENNESSEE AND NORTHERN RAILROAD COMPANY

CLAIM TO COVER ADDITIONAL TIME DUE UNDER RULE 44b
OF AGREEMENT EFFECTIVE JANUARY 1, 1946

CLAIM FILED IN ACCORDANCE WITH SECTION 2 OF ARTICLE
V OF AGREEMENT SIGNED AT CHICAGO, ILLINOIS,
AUGUST 21, 1954.

realistic for the Brotherhood to contend that a specific rule must be applied in a manner that would antedate the effective date of the basic working agreement. Nevertheless, that was the organization's position in handling the dispute on the property.

The 40-Hour Week Agreement of March 19, 1949 grew out of uniform notices served April 10, 1948, upon individual railroads by Sixteen Cooperating (Non-Operating) National Labor Organizations for a reduction in the normal work week from 48 to 40 hours, without loss of earnings, time and one-half rate for work on Saturday, and double time rate for work on Sundays and designated holidays with a minimum guaranty of eight hours for work on Saturdays, Sundays and Holidays, and for a wage increase of 25c per hour.

The Organizations, by their penalty pay proposals, sought a standard work week of five 8-hour days, Monday through Friday, inclusive. A Presidential Emergency Board (No. 66) was appointed to investigate the dispute arising out of the Organizations' notices of April 10, 1948 and the Carriers' proposals served on or about April 19, 1948. The Emergency Board, in recommending a staggered work week of five days with two days' rest in seven, denied the Organizations' request for punitive pay on Saturdays and Sundays as such and for a minimum guaranty of eight hours for service on Saturdays, Sundays and Holidays. The Emergency Board also recommended against increasing the punitive pay for work on holidays from time and one-half to double time rate.

There is a limited number of clerical employes on this Carrier (about 15 or less). With the exception of one or two employes at York, Alabama, the others are employed in Mobile. With one or two exceptions, the employes' work weeks are Monday through Friday with Saturday and Sunday rest days.

On those Carriers, parties to the 40-Hour Week Agreement of March 19, 1949, Emergency Board 66 denied the Organizations' request for a standard work week of five 8-hours days, Monday through Friday, inclusive, and punitive pay for work on Saturday and Sunday as such, as well as the Organizations' request for a minimum guaranty of eight hours for service on Saturdays, Sundays and holidays. The Organizations on those Carriers, parties to the March 19, 1949 Conference Committee Agreement, were unsuccessful in securing through collective bargaining processes a rule requiring a minimum guaranty of eight hours and punitive rates for work performed on Saturdays, Sundays and Holidays, but here the petitioner is nevertheless requesting this Division to interpret a suspended and inoperative rule as requiring this Carrier to compensate employes notified or called to perform service on rest days or work on holidays for a minimum of eight hours at time and one-half rate.

There is no basis for a sustaining award and this Division is requested to so find.

All data submitted in support of Carrier's position have been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 1, 1949, clerical employes on Carrier's property were not subject to any collective bargaining agree-

ment. On November 30, 1949, however, Carrier entered into an Agreement with the Brotherhood whereby, effective December 1, 1949, the Agreement between the Brotherhood and the St. Louis-San Francisco Railway Company would be adopted on Carrier's property, subject to certain exceptions contained in the Alabama, Tennessee and Northern Railroad Company Agreement effective December 1, 1949.

Rule 44 in the Agreement between the Brotherhood and the St. Louis-San Francisco Railway Company effective January 1, 1946, consisted of two paragraphs, but when those parties entered into negotiations to revise their Agreement to conform to the March 19, 1949, National Forty-Hour Week Agreement, disagreement arose concerning paragraph (b) of Rule 44 and the matter was referred to the Disputes Committee established by Article VI in the latter Agreement. When the present Carrier and the Brotherhood entered into the Agreement on November 30, 1949, effective December 1, 1949, adopting the Agreement between the Brotherhood and the St. Louis-San Francisco Railway Company, with respect to Rule 44 (b) it was agreed:

"Notified or Called

"Rule 44. (b) This rule shall be inoperative until decision rendered by Disputes Committee set up under Article VI of the Chicago Agreement signed March 19, 1949. Rule adopted by the Frisco after decision rendered by Disputes Committee will apply to Alabama, Tennessee and Northern Railroad Company."

It is obvious that this dispute is prematurely before this Division and it will be remanded to the parties without prejudice, with the understanding it may be resubmitted to this Division in case of any disagreement after decision has been rendered by the Forty-Hour Week Disputes Committee.

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 Employees involved in this dispute are respectively Carrier and Employees 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 claim is disposed of in accordance with the Opinion.

AWARD

Claim disposed of in accordance with the 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 July, 1959.