**Award No. 9243**

**Docket No. CL-8723**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Mortimer Stone, Referee**

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## PARTIES TO DISPUTE:

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

## THE PULLMAN COMPANY

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

1. That the Carrier violated the rules of the current working Agreement, effective January 1, 1953, when it required Clerk J. Lin, Pennsylvania Terminal District, to work six days in his work week beginning November 13, 1953, and refused to compensate him at the time and one-half rate of his position for work performed on the sixth day.

2. That the Carrier shall now be required to compensate Clerk Lin for the difference between the straight time rate allowed him and the time and one-half rate to which he was entitled for work performed on November 18, 1953.

**EMPLOYES' STATEMENT OF FACTS:** Clerk J. Lin was regularly assigned to position 53-45 in the Pennsylvania Terminal District, and his assigned work week, prior to November 16, 1953, was Friday through Tuesday with Wednesday and Thursday as the designated rest days.

On November 12, 1953, Clerk Lin was notified that effective November 16, 1953, the rest days of his position were changed to Thursday and Friday, as a result of which he was required to work six days during his 40-hour work week, commencing November 13 and ending on November 19. Consequently, Clerk Lin received only one day of rest in seven during the week in question, which was November 19, 1953.

Under Rule 53 (i) Clerk Lin's work week began on November 13 and terminated on November 19, or seven days from the beginning of the first day on which his assignment was bulletined to work.

Carrier compensated the claimant for eight hours at straight time rates for work performed on November 18, the sixth day of his work week.

and the Company is not required to pay time and one-half in connection with a changed work week.

## CONCLUSION

In this ex parte statement the Company has shown that the service performed by Clerk Lin on November 18, 1953, was on his assigned work day. Also, the Company has shown Lin was not worked more than 5 days in any work week and that he performed no service on his assigned rest day or on the sixth day of any work week. Additionally, the Company has shown that he properly was compensated for service performed at the straight time rate of pay. Finally, the Company has shown that the Organization's claim for payment at the rate of time and one-half for work performed by the incumbent of Position 53-45 on November 18, 1953, is not supported by any rule or provision in the Agreement in effect between the parties. The Organization's claim is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** By requisite notice effective November 16, 1953, claimant's rest days were changed from Wednesday and Thursday to Thursday and Friday. As a result claimant was required to work six days in succession: November 13 to 18, inclusive. Claim based on the overtime rule is made for time and one-half rate of pay for the sixth day worked instead of the pro rata rate as allowed.

The controlling rules of the Agreement are in common form. Under like or equivalent rules the same issue has repeatedly been submitted to this Division and over vigorous dissent and earlier exception a succession of sustaining awards have resulted, participated in by able and experienced referees. Therefrom we have a well established rule of construction on this Division as to the application of the confusing rules involved to the situation here presented. See Awards 5586, 5807, 7319, 7320, 7324, 7719, 8078, 8103, 8144 and 8145.

If this were a new issue we might well reach a different conclusion, but the intent and application of the rules is far from explicit and a conflicting award here could not clarify the issue but only result in confusion.

**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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1960.

**DISSENT TO AWARD NO. 9243, DOCKET NO. CL-8723**

Here, the Referee chooses to follow precedent Awards despite our Dissents thereon clearly showing that they were based on erroneous conclusions contrary to or at least not supported by the provisions of the rules involved, and his own individual opinion that the prior Awards upon which he relies are in error,—

> "If this were a new issue we might well reach a different conclusion * * *."

This Award, therefore, only adds confusion with respect to a subject already fraught with confusion. See our Dissents to **Awards 7319, 7324, 8077, 8103,** and others, and Special Concurrences to **Awards 7320** and **7719.**

For these reasons, the undersigned Carrier Members dissent to this Award.

**/s/ C. P. Dugan**

**/s/ J. E. Kemp**

**/s/ R. A. Carroll**

**/s/ W. H. Castle**

**/s/ J. F. Mullen**