Award No. 9570

Docket No. CL-8392

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the terms of the clerical agreement on Sunday, December 27, 1953, and Sunday, January 3, 1954, when it refused to compensate Extra Clerk, J. J. Ryan, for time and one-half for services performed on those days, and that it shall now be required to properly pay Clerk Ryan at the rate of time and one-half in accordance with Rule 31 (c) of the Agreement.

EMPLOYES' STATEMENT OF FACTS: The claimant, J. J. Ryan, performed first service for the Carrier as an extra clerical employe at Parsons, Ohio, May 21, 1950, in the Transportation Department.

There is in effect an agreement between the parties, establishing, effective January 1, 1951, a bona fide extra list for Group 1 employes of the Transportation Department at Parsons, Ohio. Clerk Ryan is assigned to that extra list on the basis of the date of his first service with the Carrier as a clerical employe—May 21, 1950. A copy of the extra list agreement is attached hereto as Employes' Exhibit "A." Section 5(A) of the extra list agreement provides for the use of employes from the extra list on a "first-in first-out" basis from day to day.

Under operation of the bona fide extra list agreement the work week for employes assigned thereto begins with Monday of each week. They can, of course, be called upon to work on any of the seven days of the work week in a manner to produce two days of the work week as rest days.

During the period, Monday, December 21, 1953 and Sunday, December 27, 1953, Ryan was called from the extra list and used as follows:

OPINION OF BOARD: The claimant is an extra employe at Parsons, Ohio, and during the period beginning Monday, December 21 and ending Sunday, December 27, 1953, he worked and was paid as follows:

Monday, December 21, 1953	12 M. to 8 a.m. Paid eight hours at the applicable straight time rate.
Tuesday, December 22, 1953	Did not work.
Wednesday, December 23, 1953	4 p.m. to 12 M. Paid eight hours at the applicable straight time rate.
Thursday, December 24, 1953	4 p.m. to 12 M. Paid eight hours at the applicable straight time rate.
Friday, December 25, 1953	8 a.m. to 4 p.m. Paid eight hours at the rate of time and one-half.
Saturday, December 26, 1953	12 M. to 8 a.m. Paid eight hours at the applicable straight time rate.
Sunday, December 27, 1953	12 M. to 8 a.m. Paid eight hours at the applicable straight time rate.

During the period beginning Monday, December 28, 1953 and ending Sunday, January 3, 1954, he worked and was paid as follows:

Monday, December 28, 1953	12 M. to 8 a.m. Paid eight hours at the applicable straight time rate.
Tuesday, December 29, 1953	Did not work.
Wednesday, December 30, 1953	8 a.m. to 4 p.m. Paid eight hours at the applicable straight time rate.
Thursday, December 31, 1953	8 a.m. to 4 p.m. Paid eight hours at the applicable straight time rate.
Friday, January 1, 1954	12 M. to 8 a.m. Paid eight hours at the rate of time and one-half.
Saturday, January 2, 1954	12 M. to 8 a.m. Paid eight hours at the applicable straight time rate.
Sunday, January 3, 1954	4 p.m. to 12 M. Paid eight hours at the applicable straight time rate.

The claimant asks that he be paid the difference between what he was paid on Sunday, December 27, 1953 and Sunday, January 3, 1954, and the rate of time and one-half due to the fact that he had but one rest day, namely, Tuesday, of each week, and under the Agreement he was entitled to two rest days in each week and was required to work six days each week; that he should be paid the time and one-half rate for Sunday, December 27, 1953 and Sunday, January 3, 1954.

From the evidence produced at the hearing, the Board finds that the claimant was paid at the time and one-half rate for Friday, December 25, 1953, and Friday, January 1, 1954, due to the fact that the claimant had worked a second tour of duty within a twenty-four hour period. The claimant's first tour of duty started on Thursday, December 24, 1953 at 4:00 P. M. and ended December 24, 1953 at 12:00 midnight. The second tour of duty within a twenty-four hour period started at 8:00 A. M. on December 25, 1953 and ended at 4:00 P. M. on the same date.

The same is true for the week starting Monday, December 28, 1953. The claimant worked his first tour of duty within a twenty-four hour period on Thursday, December 31, 1953 from 8:00 A. M. to 4:00 P. M. and his second tour of duty within a twenty-four hour period started at 12:00 midnight and ended at 8:00 A. M. on January 1, 1954.

Under Section 5 (c) of a Memorandum of Agreement, effective January 1, 1951, governing the extra list for Group I employes in the "Parsons Transportation Department", it is provided that:

> "C. When extra clerks are worked the second tour of duty within a twenty-four hour period, and/or worked beyond forty hours in any work week, for which service time and one-half is paid, time paid for in excess of eight straight time hours will not be used in computing the 40 hour work week for the extra clerk and also will not be used in computing the number of regularly assigned extra clerks to be assigned to the extra list for the succeeding payroll period."

This provision expressly provides that when extra employes are worked a second tour of duty within a twenty-four hour period, for which such service time and one-half is paid, time paid for in excess of eight straight time hours will not be used in computing the 40 hour work week for the extra clerk. Therefore, the Board finds that the claimant under this Rule of the Memorandum of Agreement did not work more than 40 hours in the work week starting Monday, December 21, 1953 and ending December 27, 1953, nor in the work week starting Monday, December 28, 1953 and ending January 3, 1954.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of September, 1960.