

Award No. 10290
Docket No. CL-9021

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY

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

1. Carrier violated the Clerks' Rules Agreement at Winona, Minnesota, when on July 4, 1955, it removed work covered thereby and assigned such work to an employe outside the scope and application of that Agreement.

2. Carrier shall now be required to compensate Employee S. J. Wanek for the difference between what he was paid and eight (8) hours at the penalty rate of Baggage-man Position No. 66.

EMPLOYEES' STATEMENT OF FACTS: Employee S. J. Wanek is the regular occupant of Relief Ticket Clerk-Baggage-man-Trucker position at Winona, Minnesota and is assigned to work as follows:

Days of Assignment	Hours of Assignment	Relieve on Position No.
Thursday	9 am to 6 pm	Ticket Clerk Pos. 56
Friday	9 am to 6 pm	Ticket Clerk Pos. 56
Saturday	9 am to 6 pm	Trucker-Baggage-man
Sunday	10 pm to 6 am	Trucker-Baggage-man Pos. 66
Monday	10 pm to 6 am	Trucker-Baggage-man Pos. 66
Tuesday and Wednesday as rest days		

The duties regularly assigned to Baggage-man Position No. 66 and performed by claimant on Sunday and Monday included checking baggage, handling mail and janitor work in the freight and ticket offices.

On July 1, 1955 Employee Wanek was notified that his hours of service would be changed on Monday, July 4th, a holiday, and instead of starting at

be blanked and the occupant given a call to perform the necessary work. This holding is supported by the language of Rules 25 (e) and 26 (b) which state in effect that an employe required to work on a holiday shall be paid at the rate of time-and-one-half with a minimum allowance of two hours. There is no basis for the contention that an employe used on a holiday is entitled to work eight hours at the pro rata rate. Awards 7033, 7136. He is entitled to eight hours pay at the pro rata rate if he does not work on a holiday, and he is entitled to time-and-one-half for the time worked, in addition thereto, with a minimum allowance of two hours. The rules governing work on holidays are special and controlling."

As indicated in the Carrier's Statement of Facts, Claimant Wanek was paid 8 hours holiday pay for the holiday, July 4, 1955. His services were not required on the holiday. He was not called to perform service and did not perform service on the holiday. He had no exclusive claim to the work of handling mail and baggage on Trains 56 and 4. This work is regularly performed by the telegrapher as well as the night baggageman. The volume of mail and baggage to and from those trains on the holiday was very small and as we have said, the telegrapher who was on duty in connection with the operation of trains, handled the small amount of mail.

There is no provision which required the Carrier to call employe Wanek at 10:00 P. M. July 4 as the employes contend nor is there any provision which required the Carrier to allow him a minimum payment of 8 hours at the time and one-half rate on the holiday. He received 8 hours at the straight time rate as holiday pay and 4 hours at the time and one-half rate for work actually performed on the morning of July 5, 1955. He is not properly entitled to any additional payment and we respectfully request that the claim be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a regular incumbent of Relief Ticket Clerk-Baggageman position at Winona and his work assignment is Thursday, Friday and Saturday 9:00 A. M. to 6:00 P. M. and Sunday and Monday 10:00 P. M. to 6:00 A. M. with Tuesday and Wednesday rest days.

On July 1st the Carrier notified him that on Monday, July 4th his regular starting time of 10:00 P. M. for that day only would be changed to 1:45 A. M.

This claim is presented to us because of an alleged improper assignment of work to an Employe outside the scope and application of the Clerks Agreement.

During the period 10:00 P. M. to 1:45 A. M. when the Claimant came on duty handling of baggage and mail was done by the telegrapher operator. The Carrier points out that very little baggage and mail was handled during this period.

The Carrier also makes claim that telegraph operators have normally performed such work jointly and interchangeably and on holidays the telegraphers and not the clerks have performed it.

The record reveals that the job in question was subject of a bulletin which reads as follows:

"Applications for position of temporary night baggage at Winona, Position No. 66, from 10:30 P. M. to 6:30 A. M. rate \$12.8600 per days daily except Sundays and Mondays will be received in my office until noon, March 9, 1953.

"Duties consist of handling mail and baggage, janitor work, checking heaters and icing in cars, etc."

Under date of August 30, 1955 the Superintendent wrote the following letter in answer to the claim.

"I am returning your time slips dated July 4, 1955 claiming four hours at penalty rate, 1:45 A. M. July 5, 1955, contending the operator handling mail on Trains No. 56 and No. 4 in violation of Rules Agreement and I am declining payment of your claim accordingly inasmuch as over a period of years, the operator at Winona has always assisted in handling the mail on trains and there is nothing different the handling of the mail for 56 and 4 on July 5 than has been in effect for many years."

To sustain its position Claimant cites Rules 1, 28 and 32, and memorandum of Agreement No. 9.

"Rules 1(e), 28 and 32 of the Schedule Rules Agreement read in whole or part as follows:

"Rule 1(e), third paragraph

"Positions within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

"Rule 28

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"(f) In working overtime before or after assigned hours on one of the seven (7) holidays specified in Rule 35(b) (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work."

"Memorandum of Agreement No. 9 reads in part:

"2. WHEN AN EMPLOYEE IS CALLED FOR OVERTIME WORK ON A HOLIDAY AND THE WORK CAN BE

'IDENTIFIED WITH A SPECIFIC POSITION' — PREPONDERANTLY THE DUTIES OF A SPECIFIC POSITION.

"When an employe is called for overtime work on a holiday other than as provided in Paragraph 1 and the work is preponderantly the duties of a specific position, the employe regularly assigned to that position will be called. If that employe is unavailable, the senior available employe with sufficient fitness and ability in the 'sub-division' will be called.

"NOTE: In applying the provisions of this section, 'the employe regularly assigned to that position' means the employe (either regular or relief) who would have filled that position on that day, had it not been a holiday, will be called. If such employe is the regular occupant and he is unavailable, then the relief occupant of that position, if any, will be called or vice versa. If the regular and relief occupants are unavailable, the senior available employe with sufficient fitness and ability in the 'sub-division' will be called."

The record in our opinion shows that the Claimant is the regularly assigned Employee of the position covering the work here involved.

Since Monday, July 4th is a holiday it is treated as unassigned.

From 10:00 P. M. to 1:45 A. M. on the holiday some mail and baggage was handled by the telegraph operator and it is over this period that the dispute arises.

In the present case the holiday being an unassigned day and since the Claimant is regularly assigned to the position the rules above set out are pertinent.

The rules in our opinion provide that when work is required on a holiday that the regularly assigned Employee should be used.

Since we have decided that the Claimant is regularly assigned to Position No. 66 it is our opinion that under the rules quoted he is entitled to be called to perform the work during the holiday period, under the circumstances involved in this dispute.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 20th day of December, 1961.