

Award No. 11058
Docket No. CL-10917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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:

(a) That the Carrier violated the terms of Clerks' Agreement No. 8, when, on Christmas Day, December 25, 1957, (Wednesday) and again on New Year's Day, January 1, 1958 (Wednesday) it failed and refused to call and use Carl E. Huggins, Yard Clerk, Marion, Ohio, Position No. A-16, to work extra time in the performance of his own regularly assigned class of work in the freight yard at Marion, and instead called and required F. M. Coburn, Chief Clerk to Freight Agent to perform duties of Yard Clerk belonging to position occupied by the claimant, Huggins, and

(b) That Carl E. Huggins be allowed two days' pay at the holiday rate of pay — time and one-half times the straight time rate of \$18.24 per day of 8 hours.

EMPLOYEES' STATEMENT OF FACTS: 1. On the dates covered by this claim, Claimant Carl E. Huggins was regularly assigned to the position of Yard Clerk A-16, Marion, Ohio. The duties of Claimant's position were to make yard checks, check cars to and from connections, making interchange reports and doing teletype work on consists and interchange. The position was assigned to work 8:00 A. M. to 4:00 P. M., and was relieved on Saturday and Sunday by a regularly established relief position.

Claimant Huggins' position had previously been worked regularly on holidays, but on December 23, 1957 and again on December 30, 1957, Claimant Huggins was notified that his position would be "laid in" on December 25, 1957 and January 1, 1958 (Employees' Exhibits "A" and "B").

CONCLUSION

The Carrier has shown that the performance of the work in question was in accordance with Rule 35 (b), and that the work being on an unassigned day the provisions of Rule 35 (a) are not applicable in a manner which operates to exclude the provisions of Rule 35 (b).

The claim should be denied in its entirety.

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All data contained in this submission have been discussed in conference or by correspondence with the Employee Representatives.

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The Chesapeake and Ohio Railway Company.

On December 25, 1957 and January 1, 1958, the Carrier required the Chief Clerk to perform work on these two holidays. The Employees contend that he performed duties assigned to and regularly performed by Claimant.

There is in effect between the parties the following Agreements.

“RULE 35 — WORKING OVERTIME

“(a) Except where it is otherwise agreed between the proper officer and Division Chairman or Local Chairman authorized to act in his stead, in working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on holidays; the same principle shall also apply in working extra time on unassigned days except as provided in Section (b) of this rule.

“(b) Work on Unassigned Days. 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 ‘cut off’ (furloughed) employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee. In working regular employees hereunder, it is understood that where a small amount of work is required on each of two or more positions and only one employee is required, the employee regularly assigned to the majority of the work to be performed will be used.”

The above rule is different in that many Agreements consider a Holiday as an unassigned day. For that reason this opinion is confined to properties having a similar Agreement as the one contained herein.

Award 10848 deals with the same problem and same Agreement on the same property. We concur with the opinion expressed therein.

For the foregoing reasons, we believe the Agreement was violated and that the Claimant is entitled to one day's pay at the rate of time and one-half each of the two days.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1963.