

Award No. 14927
Docket No. CL-15566

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5768) that:

(1) Carrier violated the current Clerks' Agreement when it established a regular relief position which required Mr. J. P. Reese to work thirteen (13) hours in a day.

(2) Mr. J. P. Reese, his successor and/or successors, be compensated five (5) hours at the time and one-half rate, less five (5) hours paid for at the straight time rate, for each Monday commencing November 6, 1961, until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Effective November 3, 1961, the Carrier established a new position, designated as Relief Clerk, with the following assignment:

Cashier-Clerk, Leesville — \$19.74 — 10 AM-7 PM — Saturdays & Sundays
General Clerk, Leesville — \$18.96 — 5 AM-2 PM — Mondays
Ticket Clerk, DeRidder — \$19.20 — 8 AM-5 PM — Tuesdays & Wednesdays
Rest Days — Thursdays and Fridays

As the occupant of this position was required to work thirteen (13) hours in a day, commencing 10:00 A. M. each Sunday, and compensated for service in excess of eight (8) hours occurring each Monday at the straight time rate, claim was timely filed on November 8, 1961, with Superintendent Switzer (Employees' Exhibit No. 1), who declined same on November 16, 1961 (Employees' Exhibit No. 2). The claim was then appealed to Mr. D. E. Farrar, the highest officer designated by the Carrier to whom appeals may be made (Employees' Exhibit No. 3), on December 18, 1961, who declined same on January 12, 1962, file 013.33-375 (Employees' Exhibit No. 4). On September 6, 1962, request was made by the Organization for an extension of the time limits for a period of six months after the claim is actually discussed in conference, which was agreed to by Mr. Farrar in his letter dated September 13, 1962. Claim was discussed in conference with Mr. Farrar in Kansas City

excepted from terms of Rule 31 (a) in the circumstances of this case, claim was denied.

Pertinent correspondence exchanged by the parties concerning this claim is attached as Carrier's Exhibits A to D, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: The work assignment of which Claimant complains required duty each Sunday from 10:00 A.M. to 7:00 P.M. with resumption of work on Monday at 5:00 A.M. and continuing until 2:00 P.M., each tour allowing one hour for meal time.

The rule in question is Rule 31 of the Agreement requiring overtime pay for work in excess of 8 hours on any day.

For the purpose of deciding this claim, and in line with the overwhelming weight of authority of prior decisions of this Board, we invoke the rule that a "day" commences with the time of the work assignment, i.e., 10:00 A.M. on Sunday and thus ends 24 hours later, at 10:00 A.M. on Monday. (Awards 687, 2030, 2053, and others.) Claimant, starting at 5:00 A.M. on Sunday, was thus on duty for an additional 5 hours prior to the end of the "day." Prima facie the claim is good.

Carrier has asserted an oral agreement exempting this relief assignment from the application of Rule 31; however, there is insufficient evidence, either in the record made on the property or the subsequent submissions of Carrier, to support such defense.

The claim will be limited to the period from November 6, 1961 to October 31, 1964, in conformity with the facts developed in the record.

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 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 Agreement was violated.

AWARD

Claim sustained for period defined in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1966.

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