



Award No. 15527
Docket No. CL-16075

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5972), that:

1. The Carrier violated the Clerks' Agreement when it failed to properly compensate Cashier J. W. McDearmon for July 4, 1964.

2. The Carrier shall now compensate Cashier J. W. McDearmon for an additional three hours' pay at the time and one-half rate of pay applicable to the position of Cashier, Farmville, Virginia, for July 4, 1964.

EMPLOYEES' STATEMENT OF FACTS: J. W. McDearmon is assigned to the position of Cashier at the Carrier's Farmville, Virginia Freight Station, 8:00 A. M. to 5:00 P. M., one hour for lunch, Monday through Friday, rest days Saturday and Sunday, no relief provided. On one of his assigned rest days, Saturday, July 4, 1964, which was also a legal holiday, the Carrier required him to work from 8:00 A. M. to 11:00 A. M. For this service Claimant was paid three hours' pay at the applicable time and one-half rate for service performed on one of his assigned rest days.

Claim that Cashier J. W. McDearmon should be paid an additional three hours at the applicable time and one-half rate for work performed on a legal holiday was duly filed under date of July 4, 1964 and, being declined, was timely appealed to Mr. H. C. Wyatt, Senior Vice President, who is the Carrier's highest officer to whom appeals may be made, on February 8, 1965. (Employees' Exhibit A.)

Mr. Wyatt declined the appeal under date of March 31, 1965, (Employees' Exhibit B.)

On April 2, 1965, the General Chairman acknowledged receipt of Mr. Wyatt's letter of March 31, 1965, and advised that he did not concur in the position taken by the Carrier and requested conference for discussion. (Employees' Exhibit C.)

Conferences were held on June 23, October 21 and December 14, 1965.

By mutual agreement between the Parties the time limit in this particular case was extended until Midnight, June 30, 1966, (Employees' Exhibit D).

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claim in this case is based up on the provisions of an agreement between this Carrier and the Brotherhood of Railway and Steamship Clerks bearing effective date of October 1, 1959. Copies of such agreement are on file with your Board and are, by reference, made a part hereof.

On July 4, 1964, J. W. McDearmon, Claimant in this case, was in this Carrier's employ at its station at Farmville, Virginia. At that time, he held regular assignment of Cashier, a monthly rated clerical position subject to above mentioned Clerks' Agreement of October 1, 1959. In such capacity, Claimant was assigned to work from 8:00 A. M. to 5:00 P. M., with one hour meal period, Monday through Friday, rest days Saturday and Sunday.

On Saturday, July 4, 1964, Claimant was called and used to perform service as Cashier at Farmville, Virginia, from 8:00 A. M. to 11:00 A. M. For this service, he was compensated for three hours at the time and one-half rate applicable to his regular assignment.

The Employees filed the following claim:

"That the Carrier violated the rules of the current Clerks' Agreement, particularly Rules 1, 3, 42 and 66, when on Saturday, July 4, 1964, it failed to compensate Cashier J. W. McDearmon, Farmville, Virginia, for an additional three hours' pay at the time and one-half rate for time worked on this legal holiday.

Carrier shall now compensate J. W. McDearmon for an additional three hours' pay at the time and one-half rate of pay applicable to the position of Cashier, Farmville, Virginia, for July 4, 1964."

The Carrier declined the claim.

OPINION OF BOARD: The Claimant held a regular assignment covered by the effective Clerks' Agreement. Claimant was called to perform work on a rest day which was coincidentally a recognized holiday. The Claimant was paid three hours at the time and one-half rate and the employees' claim an additional three hours' pay at the time and one-half rate.

We are concerned here with the following rules of the agreement:

"RULE 37. OVERTIME

(c) Service rendered by an employe on his assigned rest day or days will be paid for under Rule 38 except as provided in the second paragraph hereof."

"RULE 38.

NOTIFIED OR CALLED

Employee notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of three hours at pro rata rate for two hours' work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

"RULE 42.

SUNDAY — HOLIDAY WORK

(a) Provisions in effect previous to September 1, 1949, providing that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949 with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

(b) Work performed on the following legal holidays — namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the state, nation or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half. When such a holiday falls on the second assigned rest day, other than Sunday, of an employee's work week, the day following will be considered his holiday."

We are here dealing with two separate rules. One rule deals with work on rest days and the other with work on a recognized holiday.

This same question has been before this Board on many occasions and there has been a series of sustaining awards.

We concur in the prior opinions of the Board. See Awards 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 14978, 15000, 15052, 15144, 15361.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1967.