



Award No. 15528
Docket No. CL-15783

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY
(Eastern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5810) that:

(1) Carrier violated the current Clerks' Agreement in failing to properly compensate Mr. D. A. Maddison for work performed on September 7, 1964, a regularly assigned rest day which was also a holiday.

(2) Carrier shall now compensate Mr. D. A. Maddison for 8 hours at the time and one-half rate of the position of General Clerk, in addition to that paid for service performed on September 7, 1964.

EMPLOYEES' STATEMENT OF FACTS: There are in full force and effect bargaining agreements entered into by and between the Union Pacific Railroad Company, hereinafter referred to as Carrier, and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, hereinafter referred to as Employes. All such agreements are on file with this Division of the National Railroad Adjustment Board, and, by reference, are made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner, through the highest Officer designated by the Carrier to handle such disputes, failed of adjustment, and is now properly before your Board for adjudication

The claimant, Mr. D. A. Maddison, was regularly assigned the position of Night Report Clerk in the Office of the Chief Dispatcher at Cheyenne, Wyoming. The assigned hours were 10 P. M. to 6 A. M., Wednesday through Sunday with Monday and Tuesday as rest days, having a rate of pay at that time of \$461.15 per month.

A position of General Clerk in this Chief Dispatcher's office was advertised, July 6, 1964, on a temporary basis (approximately 6 months). The temporary position was assigned Mr. Maddison, July 15, 1964. The assigned

Wyoming, 10:00 P. M. to 6:00 A. M., Wednesday through Sunday with Monday and Tuesday rest days. Mr. Maddison was the senior applicant for a bulletined temporary vacancy on the position of General Clerk, 7:00 A. M. to 4:00 P. M., Sunday through Thursday, with Friday and Saturday rest days, however, because there was no qualified employee available to fill the position of Night Report Clerk, Maddison was required to remain on that position. In accordance with Rule 11(e) of the current schedule agreement with the Organization, reading as follows:

"(e) The successful applicant per section (b) shall be placed on the position as soon as practicable, but if applicant is not relieved to take his newly assigned position within ten calendar days from the date of assignment notice he shall be paid for each day worked, commencing with the tenth day, rate of his newly assigned position or the position on which he works, whichever is the greater, and in addition a penalty allowance of one dollar per work day up to the thirtieth day, and two dollars per work day commencing with the thirtieth day until placed on his newly assigned position. If held at a station other than the home station will be allowed penalty compensation as provided above or personal expenses, whichever is the greater."

Maddison was paid the rate of the General Clerk position for each day he worked as Night Report Clerk from July 15 through September 12, 1964, plus penalty of \$1.00 per day from July 24 through August 12 and penalty of \$2.00 per day from August 13, through September 12.

On Monday, September 7, 1964, a rest day of the position of Night Report Clerk, Maddison was required to work his regular assignment because there was no relief available. For this service on September 7, 1964, Claimant Maddison filed form 5056 "Daily Time Card," claiming 8 hours at the time and one-half rate for working and 8 hours at the pro rata rate for holiday pay. Mr. Maddison was allowed 8 hours at the overtime rate but the claim for 8 hours pro rata holiday pay was declined because the holiday fell on a rest day of his position and he therefore did not qualify for holiday pay.

The claim was withdrawn and then was refiled for an additional 8 hours at the time and one-half rate account required to work on a holiday, based on the contention that Mr. Maddison was entitled to 8 hours' pay at the time and one-half rate for working his rest day plus an additional 8 hours at the time and one-half rate because the rest day was also a holiday.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned the position of Night Report Clerk in the office of the Chief Dispatcher at Cheyenne, Wyoming. The assigned rest days of this position were Monday and Tuesday.

Claimant had been the successful bidder for a temporary position of General Clerk in the same Chief Dispatcher's office. Since no qualified employee was available to replace Claimant he was not permitted to work the temporary position but was paid at the higher rate.

This claim arose when Claimant was required to work on Monday, September 7, 1964, an assigned rest day of the position he was working and coincidentally, a holiday recognized by the agreement.

Carrier paid Claimant eight hours at the time and one-half rate. The Employees' claim an additional eight hours at the time and one-half rate under the rules of the agreement.

We are concerned with the following Rules of the agreement:

"RULE 40. HOLIDAY WORK

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 at the rate of time and one-half."

"RULE 41. 40-HOUR WEEK

(k) Service on Rest Days. Service rendered by employees on their assigned rest days shall be paid for under Rule 39 unless relieving an employee assigned to work on such day who does not work any portion of his assignment, in which case they will be paid eight hours at rate of time and one-half. Regularly assigned rest days shall not be changed without at least thirty-six hours' notice to the employees affected."

We have here two separate Rules. One Rule deals with work on a recognized holiday and the other with work on an assigned rest day.

This same question has been before this Board many times. The most recent case is Award 15527 in which this Referee wrote a sustaining Award.

See also Awards 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 14978, 15000, 15052, 15144, 15361, 15362, 15376, 15450.

We will sustain the claim.

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.

**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.

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