

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6078) that:

(a) Carrier violated the current Clerks' Agreement at Newton, Kansas, when it failed and refused to properly compensate employees for service performed on May 30, 1964 holiday, and,

(b) Carrier shall now compensate A. E. Darling, M. S. Laiker, J. B. White, D. Hughes and J. Holmberg each an additional eight (8) hours at the time and one-half rate of his respective position for May 30, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Claimants named in "Item (b)" in Statement of Claim are all employees of the Carrier, coming within the full coverage of the current Clerks' Agreement and on the day in question, all were regularly assigned in the Timekeeping Department in the Superintendent's office at Newton, Kansas. All have a work week of Monday thru Friday, with Saturday and Sunday assigned rest days which are not included as a part of a regular relief assignment. All of the Claimants in their work week preceding the May 30, Memorial Day Holiday, had worked the five days of their work week, and all were required by the Carrier to perform service on their assignments on their rest day, Saturday, May 30, 1964, which was also a legal holiday under the provisions of Rule 33-A of the current Clerks' Agreement. Each of the above named Claimants performed a full eight (8) hour tour of duty on that date.

Claimants were only compensated for eight (8) hours at the rate of time and one-half for services performed on the May 30 date in question, and in accordance with the General Manager's statement in his letter of September 11, 1964, (See Employes Exhibit B), this compensation was allowed for services performed on a rest day, under the provisions of Rules 32-F and 32-I of the current Clerks' Agreement. However, Claimants were not compensated for the eight (8) hours service performed on the recognized legal holiday as required under the provisions of Rule 33-A, which provides for the payment of time and one-half for work performed on such days.

and four other employees in the Superintendent's office at Newton, Kansas, on May 30, 1964, during which discussion I reiterated and affirmed the decision conveyed to you in my letter of November 10, 1964, declining the claim.

Yours truly,

/s/ O. M. Ramsey"

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants held regular assignments covered by the Clerks' Working Agreement and were assigned positions to work Monday through Friday with rest days of Saturday and Sunday. The Claimants were called, by the Carrier, to perform work on their Saturday rest day which day was also a recognized holiday, to wit, Memorial Day. For their services on the claim day involved, the Claimants received payment at time and one-half rate. The Claimants now claim additional compensation for performing services on their rest day which also happened to fall on a recognized holiday. This claim for additional compensation was denied by the Carrier. The Carrier does not deny that the time worked on Memorial Day (May 30th) by each of the Claimants, is correct.

The following rules of the Agreement between the parties are to be considered in the present controversy:

"WORK ON REST DAYS.

32-F. Service rendered by employees on their assigned rest days shall be paid for under Rule 32-I, unless relieving an employee assigned to work on such day, in which case they will be paid the same as such assigned employee would be paid, subject to the provisions of Rule 37, unless the employee working such day shall have rendered service on five previous days in his work week, in which event he shall be paid at the rate of time and one-half.

CALLS

32-I. Except as provided in Rule 32-J employees notified or called to perform work not continuous with, before, or after the regular work period shall be allowed a minimum of three (3) hours for two (2) hours work or less and if held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis. (Rule 32-J is not applicable to the issue in this dispute.)

RULE 33.

HOLIDAY AND SUNDAY WORK

33-A. 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 under Rule 32-I."

The Carrier refused payment on the ground that the Claimants had already been paid for the services they rendered in accordance with its understanding of the Agreement between the parties.

The issue to be determined by this Board is whether these Claimants are entitled to receive the payments claimed for the work and/or services they performed on their rest day which happened to fall on a recognized holiday pursuant to and in accordance with the terms of THEIR agreement with the Carrier, as hereinabove set forth.

The Agreement between the parties with reference to the payment for services rendered on an assigned rest day, by an employee, is covered by Rule 32-F — Work on Rest Days. That part of the rule that concerns us reads as follows:

“Service rendered by employees on their assigned rest days shall be paid for under Rule 32-I, * * *.”

Rule 32-I referred to in Rule 32-F, reads as follows:

“32-I. Calls. Except as provided in Rule 32-J employees notified or called to perform work not continuous with, before, or after the regular work period shall be allowed a minimum of three (3) hours for two (2) hours work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.”

It is evident from a reading of Rules 32-F and 32-I, that all that Rule 32-I does is to set forth the rate of pay and/or allowance that an employee shall receive if he performs services on the respective periods or days listed in the rule. It is also clear from a reading of both rules that it was intended by the parties that when an employee rendered service on an assigned rest day that such employee “* * * shall be allowed a minimum of three (3) hours for two (2) hours work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.” We are not concerned with the other provisions of Rule 32-I, as they do not apply to the matter before us.

An examination of the record, in this dispute, discloses that the Claimants, when this dispute was being handled on the property and in their Ex Parte Submission, to this Board, claim a violation of Rule 33-A.

Rule 33-A reads as follows:

“33-A. Holiday and Sunday 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 for under Rule 32-I.”

That the Carrier recognizes that there are two separate and distinct rules involved in this dispute, is evident from its letter of denial of this claim dated November 10, 1964, over the signature of Mr. O. M. Ramsey, the Assistant to the Vice-President of the Carrier, wherein, among other things, he states:

“Your appeal claim is an obvious attempt to claim and collect duplicate penalties under two agreement rules * * *.” (Emphasis ours.)

This Board has consistently held by a long line of awards that the function of the Board is limited to the interpretation and application of agreements as agreed upon between the parties. We are without authority to add to, take from, write or rewrite rules or agreements for the parties, nor may we change the terms of the Agreement which has been entered into, even though the terms may be harsh, inequitable and unreasonable. The terms of the Agreement, however onerous they may be, must be enforced if such is the meaning of the language used.

Under the specific terms of the Agreement, the Carrier agreed and bound itself to pay compensation under two separate rules, to wit, Rule 32-F and Rule 33-A.

In Award 15985 (Zumas) we said:

"This Board has been called upon once again to rule on the question of whether a Claimant is entitled to compensation for both a rest day and a holiday where they occur on the same day.

This Board is committed to follow a growing number of precedents which have consistently held that the Carrier has an obligation to make two separate payments for such services where there are two separate rules and no qualifying exceptions.

See Awards 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 14978, 15000, 15052, 15144, 15226, 15340, 15361, 15362, 15367, 15440, 15450, 16627, 15528, 15531, 15553, 15660, 15661, 15754, 15764, 15800."

We will follow the prior awards and hold that the Carrier has an obligation to pay for services performed on a rest day which falls on a recognized holiday under two separate rules.

We hold that the Agreement was violated and will sustain the claims.

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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.

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