



Award No. 16479
Docket No. CL-17121

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6243) that:

1. The Carrier violated the Clerks' Agreement when it failed to properly compensate Clerk C. R. Lewis for service performed on July 5, 1965; also, when it failed to properly compensate Clerk J. J. Parsley for service performed on September 6, 1965, Columbus, Ohio.
2. The Carrier shall now compensate Clerk C. R. Lewis for an additional eight hours' pay at the time and one-half rate based on the monthly rate of \$485.26 for July 5, 1965.
3. The Carrier shall now compensate Clerk J. J. Parsley for an additional eight hours' pay at the time and one-half rate based on the monthly rate of \$503.85 for September 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: C. R. Lewis is regularly assigned to the position of Clerk, Watkins Yard, Columbus, Ohio, 11:30 P. M. to 7:30 A. M., Friday through Tuesday, rest days, Wednesday and Thursday, rate of pay \$485.26 per month.

Claimant worked his regular assignment from 11:30 P. M., Sunday, July 4, 1965 to 7:30 A. M., Monday, July 5, 1965. For this service he was allowed eight hours' pay at the applicable pro rata rate. Further on Monday, July 5, 1965, a day observed as a legal holiday under the provisions of Rule 41 of the applicable Agreement, he was used by the Carrier to fill a vacancy on a regular Watkins Yard assignment from 7:30 A. M. to 3:30 P. M. For this service he was allowed eight hours' pay at the applicable time and one-half rate. He also worked his regular assignment beginning 11:30 P. M., Monday, July 5, 1965 and ending 7:30 A. M., Tuesday, July 6, 1965. For this service he was allowed eight hours' pay at the applicable time and one-half rate for work performed on a legal holiday (Employees' Exhibit A).

Claim that Clerk C. R. Lewis should be paid an additional eight hours' pay at the applicable time and one-half rate for service performed on July 5,

pay was declined by the Agent. Clerk C. R. Lewis is regularly assigned to the position of clerk at Watkins Yard from 11:30 P. M. to 7:30 A. M. with rest days of Wednesday and Thursday."

The Carrier declined the claim.

On September 6, 1965, J. J. Parsley, the other claimant in this case, was in this Carrier's employ at its Yard Office at Joyce Avenue, Columbus, Ohio. At that time, he held regular assignment as Interchange Clerk, a **monthly rated** clerical position subject to above mentioned Clerks' Agreement of January 1, 1965. In such capacity, claimant Parsley was assigned to work from 6:00 P. M. to 2:00 A. M., Sunday through Thursday, rest days Friday and Saturday, rate of pay \$495.60 per month.

On Labor Day holiday, Monday, September 6, 1965, Claimant Parsley was called and used on the basis of his seniority to fill a vacancy scheduled to work from 7:30 A. M. to 3:30 P. M., rate of pay \$503.85 per month. He was also used to fill his own regular assignment commencing work at 6:00 P. M. on that date. Claimant Parsley was compensated at the time and one-half rate for the service which he performed from 7:30 A. M. to 3:30 P. M. on September 6, 1965, and he was compensated at the time and one-half rate for the service which he performed from 6:00 P. M., September 6, 1965, to 2:00 A. M. on September 7, 1965.

The Employes filed claim as follows on behalf of Claimant J. J. Parsley:

"1. The Carrier violated the current agreement between this brotherhood and the Carrier when on September 6, 1965 the Carrier failed to properly compensate Clerk J. J. Parsley for his performance of duties.

2. That Clerk J. J. Parsley and/or his successor shall now be allowed eight (8) hours' pay at the overtime rate applicable to his position on which he performed duties on September 6, 1965, in addition to any other compensation already allowed on the above date.

STATEMENT OF FACTS:

On September 6, 1965, the position of Transfer Clerk, Joyce Avenue, from 7:30 A. M. to 3:30 P. M. was vacant. Clerk J. J. Parsley was called to work this position at the overtime rate of pay. As September 6th was a legal holiday and Clerk J. J. Parsley was performing duties off his regular assigned position of Transfer Clerk, Joyce Avenue, from 6:00 P. M. to 2:00 A. M., he was entitled to be paid at the holiday rate and the overtime rate of pay for the duties he performed on September 6, 1965. Clerk J. J. Parsley filed an overtime claim and a claim for holiday pay with Agent L. E. Siberell and his claim for the holiday pay was declined by the Agent."

The Carrier declined the claim.

OPINION OF BOARD: July 4, 1965, fell on a Sunday and Monday, July 5, was observed as the holiday. Claimant Lewis held a regular assignment as clerk at Carrier's Watkins Yard, Columbus, Ohio, a monthly rated position, with hours 11:30 P. M. to 7:30 A. M., and work week of Friday through Tuesday.

Claimant Lewis worked his regular assignment 11:30 P. M., July 4, 1965, to 7:30 A. M., July 5, for which he was paid eight hours at pro rata rate. On the basis of his seniority, he was used to fill a vacancy scheduled to work 7:30 A. M. to 3:30 P. M., July 5, for which he was paid at time and one-half rate. He was used on his regular assignment 11:30 P. M., July 5, to 7:30 A. M., July 6, for which he was paid eight hours at time and one-half rate. The claim is that he is due compensation for an additional eight hours at time and one-half rate.

Claimant Parsley held a regular assignment as clerk at Carrier's Joyce Avenue Transfer Office, Columbus, Ohio, a monthly rated position, with hours 6:00 P. M. to 2:00 A. M., and work week of Sunday through Thursday. Labor Day was September 6, 1965. Parsley worked his regular assignment 6:00 P. M., Sunday, September 5, to 2:00 A. M., Monday, September 6, 1965, plus one and one-half hours' overtime from 2:00 A. M. to 3:30 A. M. For this service he was allowed eight hours pro rata pay and one hour and thirty minutes' pay at time and one-half rate. He was called and used on the basis of his seniority to fill a vacancy scheduled to work from 7:30 A. M. to 3:30 P. M., September 6, 1965, for which he was allowed eight hours at time and one-half rate. He was also used on his regular assignment, 6:00 P. M., September 6, to 2:00 A. M., September 7, for which he was compensated for eight hours at time and one-half rate. The claim is that he also is due compensation for an additional eight hours at time and one-half rate.

A careful review of the entire record and the rules cited by Petitioner fails to support the claims of Lewis and Parsley for an additional eight hours' pay each at the time and one-half rate. The claims herein are clearly distinguishable from those covered by Award 10541 and similar Awards relied upon by the Petitioner. The claim will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.

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