

Award No. 16563
Docket No. CL-17219

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**

**THE HOUSTON BELT AND TERMINAL
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6361) that:

1. Carrier violated the Clerks' Agreement when it failed and refused to allow B. J. Lester time and one-half for service performed outside his regular assigned hours November 19, 1966.

2. Mr. B. J. Lester shall now be allowed the difference between straight time rate and time and one-half rate for service performed on November 19, 1966.

EMPLOYES' STATEMENT OF FACTS: Claimant B. J. Lester was a regular assigned Line Desk Clerk at Settegast Yards whose established and assigned hours were 7:00 A. M. to 3:00 P. M.

After having laid off on an assigned work day, November 19, 1966, Lester was called by management to fill an 11:00 P. M. to 7:00 A. M. vacancy on a yard checking position for which he was allowed 8 hours at the pro-rata rate.

The instant dispute has been handled in accordance with the procedural requirements of the current agreement between the parties, up to and including the highest officer designated for that purpose, discussed in conference and upon final denial is properly before your honorable Board for adjudication. Employees' Exhibits Nos. 1, 2, 3, 4, 5 and 6.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claim was first filed in behalf of Claimant by a letter dated January 9, 1967, addressed to Superintendent Reese (Exhibit A). The alleged charge was that the Carrier had violated the twenty-four hour layoff rule in calling Claimant to protect an 11:00 P. M. to 7:00 A. M. assignment on November 19, 1966. Superintendent Reese declined the claim in a letter dated January 17, 1967, (Exhibit B) on grounds that

Claimant: (1) Did not work his regular assignment on November 19, 1966, (2) Claimant was marked up OK for duty, and (3) Claimant was called to perform extra work off the Willing Workers' Extra List.

Carrier wishes to point out the question as to the alleged violation of the twenty-four layoff rule was settled on the property and is now moot as evidenced by General Chairman's letter to Mr. R. W. Best withdrawing the companion claim to this one (claim of J. R. Gallemore) for lack of contractual support (Exhibit C).

The Organization appealed the decision of Superintendent Reese to Mr. R. W. Best, Manager of Personnel and Labor Relations, the highest officer of the Carrier designated to handle claims. (Exhibit D.) The claim was subsequently denied by Mr. Best (Exhibit E) on grounds that Mr. Lester did not work in excess of eight (8) hours on date of claim nor in excess of forty (40) hours that week. The Carrier next received notice of the Organization's intent to file ex parte submission placing the claim before your honorable board for a decision (Exhibit F).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned Line Desk Clerk with assigned hours 7:00 A. M. to 3:00 P. M. He laid off, for personal reasons, on November 19, 1966. At 7:35 P. M., on that date, he called in and "Ok'd for duty." There were no extra clerks available to protect a regular third shift assignment on November 19, with hours 11:00 P. M. to 7:00 A. M. Claimant having "Ok'd" for duty and being the senior man on the "Willing Workers' Extra List" he was called to and did fill the vacancy for which he was paid at the pro rata rate. The Claim is that Rule 43 of the Agreement contractually required that Carrier compensate him at the time and one-half rate. The Rule in material part, reads:

"RULE 43.

NOTIFIED OR CALLED

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. . . ."

The "Willing Workers Extra List" was established by the following Agreement of the parties, dated May 1, 1953:

"Quite often, due to the extra board being exhausted, or for other reasons, it becomes necessary to fill temporary short vacancies by 'doubling' regularly assigned employees or working them on their rest days.

In such instances the senior available qualified employee desiring to fill the vacancy is entitled to do so.

A majority of the regularly assigned employees do not desire to 'double' or work on their rest days and in an effort to find a practical and workable solution to this problem it has been agreed —

- (a) All regularly assigned employes who desire to 'double' or work on their rest days must so advise in writing.
- (b) Such employes must state the hours and days they will be available.
- (c) They must state the office or offices in which they desire to 'double' or work on their rest days.
- (d) The foregoing information must be given jointly to Messrs.:

H. A. Johnson, Trainmaster
 F. W. Smith, Assistant Trainmaster
 A. J. Garey, Agent
 R. R. Warren, Agent
 E. J. Blakeslee, Chief Record Clerk

with copy to Division Chairman Newbill.

- (e) Except in instances where an employe can reach the new work location without undue delay, the employe must be available for the entire tour of duty.
- (f) Beginning May 7, 1953, only those regularly assigned employes who have complied with these instructions will be considered available to fill temporary short vacancies."

There is in the record an uncontroverted letter from the General Chairman to Manager Personnel-Labor Relations, under date of February 28, 1967, which in material part reads:

"We agree with Superintendent Reese there is no agreement—written, verbal or otherwise—that a regularly assigned clerk when laying off has to mark off for a 24 hour period, therefore, instructions should be issued to that effect. This would also apply to an employe who is regularly assigned to a 7 A. M. to 3 P. M. shift and marks off on a certain date. He would be available for call to protect a 3 P. M. to 11 P. M. vacancy at punitive rate."

While this letter is dated after the claim date it is evidence of the intent of the parties as to construction of the Agreement which was effective on July 1, 1950.

It is the position of Carrier that under the 40 Hour Work Week provisions of the Agreement (Rule 37) that since Claimant worked only eight hours on November 19 his rate of pay for those hours was established as pro rata rate.

Clerks argue that: (1) Rule 43 is a specific provision of the Agreement which prevails over Rule 37: and (2) Fourth Division Award No. 1013 and our Award No. 14945, interpreting rules similar to Rule 43, support its interpretation and application of Rule 43.

This case differs in fact from Fourth Division Award No. 1013 and our Award 14945 only in that the Claimants therein were required to work outside

of their regular work periods without having informed their employer of their willingness to do so, as Claimant herein did.

We find that: (1) Rule 43 of the Agreement prevails over Rule 37; (2) Claimant herein did not waive his rights to compensation as provided for in Rule 43 of the Agreement by voluntarily having his name placed on the "Will-ing Workers Extra List;" and (3) the agreement between the parties expressed in the letter of February 28, 1967, from the General Chairman to Manager Personnel-Labor Relations, supra, along with Fourth Division Award No. 1013 and our Award 14945 are persuasive that the Claim must be sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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