

Corrected Copy



Award Number 17466

Docket Number CL-18045

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6505) that:

- 1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it failed to properly compensate employee W. J. Bauer for work performed on September 4, 1967, which was both a holiday and one of his assigned rest days.
- 2) Carrier shall now be required to compensate employee W. J. Bauer an additional eight (8) hours at the time and one-half rate of pay of PFI Position No. 8004 for work performed on Monday, September 4, 1967.

EMPLOYEES' STATEMENT OF FACTS: Employee W. J. Bauer is the regularly assigned occupant of Perishable Freight Inspector Position 8012 at Bensenville, Illinois. Position 8012 is a relief position assigned to relieve as follows:

Position 8009 from 7 A.M.- 3 P.M.-Wednesday and Thursday
Position 8005 from 8 A.M.- 5 P.M.-Friday and Saturday
Positions 8003 from 3 P.M.-11 P.M.-Sunday

On Monday, September 4, 1967, which was one of his regularly assigned rest days and also one of the recognized holidays—Labor Day, employee Bauer was used to fill PFI Position 8004 which was temporarily vacant due to the absence of the regular occupant thereof account sickness.

Employee Bauer was paid eight (8) hours at the time and one-half rate for service performed on Position 8004 on September 4, 1967, Labor Day.

Time slip was presented by employee Bauer for an additional eight hours pay at the time and one-half rate. On this time slip employee Bauer showed his regularly assigned Relief Position 8012, and in the space provided for "Explanation of Overtime and Calls" stated: "CLAIMING IMPROPERLY COMPENSATED FOR 9/4/67 LABOR DAY."

Payment of that time slip was disallowed by Mr. R. J. Kemp, Assistant to Vice President in his letter of October 31, 1967, Employees' Exhibit "A".

assigned occupant thereof account illness, the Carrier proceeded in assigning such overtime by notifying or calling employees in accordance with the applicable schedule rules.

Claimant Bauer, being the available qualified senior employe on Monday, Sept. 4, 1967, was called and used to fill Position 8004 during the hours of 11:00 P.M. to 7:00 A.M. on Monday, September 4, 1967, on an over-time basis.

For such service on his rest day, which was coincidentally a holiday, Claimant Bauer was properly paid eight hours at the time and one-half rate for working such day, i.e., Monday, September 4, 1967, in accordance with schedule rules and a mutually recognized past practice of long standing.

Attached hereto as Carrier's exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour,
Vice President, to Mr. H. C. Hopper,
General Chairman, under date of
February 1, 1968 Carrier's Exhibit "A"
Letter written by Mr. Amour to Mr.
Hopper under date of February 19, 1968 Carrier's Exhibit "B"
Letter written by Mr. Amour to
Mr. Hopper under date of June 12, 1968 Carrier's Exhibit "C"

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was the regularly assigned incumbent of Perishable Freight Inspector Position #8012, a regular relief position having Mondays and Tuesdays as rest days. On Labor Day, September 4, 1967, a vacancy arose on Perishable Freight Inspector Position #8004. Claimant, who was the available qualified senior employe, was called and used to fill the vacancy on Position #8004. For service performed he was paid 8 hours at the time and one-half rate.

Claimant thereafter filed a claim for 8 hours at the time and one-half rate for September 4, 1967, making claim at the rate of Position #8012 and also indicating thereon "Holiday Agreement Feb. 1965." This claim was denied by Carrier on October 12, 1967.

Subsequently another claim was submitted, which was received by Carrier on October 30, 1967, claiming 8 hours at the time and one-half rate for Position #8012 with explanation reading "claiming improperly compensated for 9/4/67 Labor Day." This claim was denied by Carrier on October 31, 1967.

On December 12, 1967 the General Chairman submitted a claim to Carrier's Vice President-Labor Relations claiming 8 additional hours at the time and one-half rate of Position #8004 account work performed on Monday, September 4, 1967. Carrier rejected this latter claim on the basis that it was not submitted in the first instance to the Carrier Office authorized to receive claims and had not been handled in accordance with the provisions of Article V of the August 21, 1954 Agreement. This claim is the subject of the dispute presented to this Board.

It is clearly apparent that the claim presented to the Carrier's Vice President-Labor Relations was not initially submitted to Carrier's Assistant

to Vice President (Refrigeration Claim Prevention), the Carrier Officer designated to receive claims in the first instance. The situation here is somewhat similar to that which confronted this Board in a dispute disposed of by our Award 14811 wherein the claim presented to the Board was not the same claim that had been handled on the property. In the dispute here at issue we can only find that the claim was not handled in accordance with the provisions of Article V of the August 21, 1954 Agreement and is therefore barred and must be dismissed.

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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of September 1969.

LABOR MEMBER'S DISSENT TO AWARD 17466 (DOCKET CL-18045)

The Referee grievously erred in his Opinion.

There was clearly no misunderstanding as to what compensation Claimant believed he was entitled for the work he performed, i.e.: "improperly compensated for 9/4/67 Labor Day", that he showed on that time slip that he worked the 11:00 P.M. to 7:00 A.M. Perishable Fruit Inspector position on the Labor Day Holiday, which day was coincidentally one of his regular rest days. The Assistant to Vice President was presented with that time slip, which he "declined account not covered by Schedule Rules or Agreement." He took no exception to the position number that Claimant used on his time slip, because that position number was, in fact, the position number he showed on his time slip five (5) days each week.

His services had been utilized with the knowledge and by the authority of his immediate supervisor because the regular occupant of the 11:00 P.M. Perishable Fruit Inspector could not work account illness. That is the one and only 11:00 P.M. position with that title at that location.

The claim was never changed in handling on the property, and it was not changed when presented to the Board. It remained the same, i.e., "improperly compensated for 9/4/67 Labor Day" for work he performed on the

11:00 P.M. to 7:00 A.M. Perishable Fruit Inspector position on that date which was also his rest day.

What was said by Referee Myers in Award 17079 very aptly states this dissenter's conclusions:

"* * * Carrier's position regarding this aspect of the case is both specious and transparent. In fact, in a case where credibility becomes a major factor in the Board's determination as to whether the claim should be sustained or denied, such a defense by the Carrier so devoid of substance tends to taint the good faith of the Carrier regarding its position in the case as a whole."

The "good faith" display by Carrier in this dispute will not detract from the Board's decisions, voluminous in number, that an employe is entitled to be compensated under both the Holiday Pay rule and the Rest Day pay rule of the Agreement, including Awards decided by the Board between the parties to this dispute. The Claimant in this dispute is the only individual affected by this erroneous award, which is a gross miscarriage of justice, to which I register dissent.

/s/ C. E. KIEF
C. E. Kief, Labor Member
9-24-69