



Award Number 17522

Docket Number TE-17106

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Texas and Pacific Railway, that:

1. Carrier violated the Agreement between the parties when it improperly compensated Operator L. R. Hutchinson, Denton, Texas, for services performed on December 25, 1965.
2. Carrier shall compensate Claimant Hutchinson for services performed on December 25, 1965, as follows:
 - (a) three hours at the applicable straight time rate.
 - (b) seven hours, forty-five minutes at the applicable time and one-half rate.
 - (c) three hours at the applicable straight time rate.
 - (d) seven hours, forty-five minutes at the applicable time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 15, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mrs. L. R. Hutchinson, hereinafter referred to as Claimant, is regularly assigned to the first shift operator position at Denton, Texas, working 7:00 A.M. to 3:00 P.M. Monday through Friday, rest days Saturday and Sunday. Claimant's position is a five day position and any service needed on the Saturday and Sunday rest day is provided by the Claimant.

On Saturday, December 25, 1965 (Christmas), Claimant was required by the Carrier to work from 5:45 A.M. until 2:45 P.M. at Denton, Texas. Claimant has been compensated for nine hours at the time and one-half rate for work performed on December 25, 1965.

Carrier has allowed a similar claim on the property. Employees refer to claim in behalf of C. H. Pierce, Big Sandy, Texas, for service performed

the rest day of December 25, 1965, claimant was called and required to perform service 5:45 A.M. 2:45 P.M., for which he was compensated a total of nine hours at the time and one-half rate.

Article 6 (k) covers compensation for service performed on rest days and specifically provides that for five day positions service performed on rest day, other than Sunday, shall be compensated for at the time and one-half rate with a minimum of two hours for each tour of duty. Here claimant was paid at the time and one-half rate for all time on duty, a total of nine hours. This satisfies the provisions of the rule and claimant is not entitled to any additional time.

This claim for double overtime is totally without merit based upon the provisions of Rule 5 (c), which specifically provides 'there shall be no overtime on overtime. . . '.

In view of these facts there exists no basis for changing the decision given you in our letter of June 23, 1966, declining this claim.

Yours truly,

/s/ O. B. Sayers"

13. The Organization being dissatisfied with the decision of the Carrier under date of March 17, 1967 notified your honorable Board and the Carrier of its intent to progress this case to you for adjudication.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant is the regularly assigned first shift Operator at Denton, Texas, from 7:00 A.M. to 3:00 P.M., Monday through Friday, with assigned rest days Saturday and Sunday. This is a five day position.

On Saturday, December 25, 1965, her assigned rest day and also a recognized holiday, Claimant was called at 5:45 A.M. and worked until 2:45 P.M., a total of nine hours.

Consequently, the Organization contends that Claimant is entitled to additional compensation—under Article 5(f)—Call Rule—for services prior to regular weekday starting time; under Article 6, Section 1(k)—Service on Rest Days—and also under Article 6, Section 2—Holiday Work—for services during the regular weekday hours. Carrier, on the other hand, contends that it properly paid Claimant for services rendered on the date involved, i.e., nine hours at time and one-half rate.

Article 6, Section 1(k) provides:

"Time worked before or after the regular weekday assignment shall be paid for in accordance with overtime provisions of Article 5(c) or the call provisions of Article 5(f)."

Article 6, Section 2, has the identical provision with regard to services rendered before or after the regular weekday assignment. Article 5(f) provides:

"When called or directed to report before or after their assigned hours, employees shall be allowed three (3) hours pay for two (2) hours' work or less and actual time worked in excess of two (2) hours at the rate of time and one-half."

On December 25, 1965, Claimant performed service from 5:45 A.M. to 7:00 A.M., a period of time prior to her regular weekday assigned hours. She was thus entitled to pay under the Call Rule (Article 5(f)), for a minimum payment of three hours at straight time rate for this service. Award 17184. However, she is entitled to this payment only once. (Cf. Award 17350).

Further, Article 6, Section 1(k), provides:

"Employees required to perform service on their assigned rest days within the hours of their regular weekday assignment shall be paid on the following basis:

* * * * *

On five day positions:

At the rate of time and one-half with a minimum of three (3) hours for each tour of duty for the Sunday designated as one of the rest days; and at the rate of time and one-half with a minimum of two hours for each tour of duty for the other designated rest day."

In addition, Article 6, Section 2, provides:

"Time worked within the hours of the regular week-day assignment on the following holidays; namely, * * * Christmas * * * shall be paid on the following basis:

* * * * *

On five and six-day positions:

At the rate of time and one-half with a minimum of three hours for each tour of duty."

Claimant worked from 7:00 A.M. to 2:45 P.M., within the hours of her regular weekday assignment. It is agreed that this date was an assigned rest day, as well as a legal holiday—Christmas. Beginning with Award 10541, this Division has decided numerous disputes in favor of the Organization on similar issues, namely, whether an employee is entitled to compensation or pay under both rules. The Carrier argues, however, that Award 10541, and those which followed it, are palpably erroneous. In Award 14138, this Referee had occasion to consider the question and what was there held is applicable herein to-wit:

"It is noteworthy, that in Award 10541, the Carrier Members filed a well-documented dissent. They have adhered to their position in each of the above-mentioned subsequent Awards, via the medium of a dissent.

"In the instant dispute, we are again requested to review our position and deny this Claim, despite the established precedents. In this respect, we are referred to a "Memorandum to Accom-

pany Award 1680," where the respected Referee (Garrison) was confronted with a similar request. In a reasoned discourse on this subject he voiced the opinion that, "(c) All semblance of predictability and uniformity of treatment in the interpretation and application of the rules would disappear." Although we are reluctant to perpetuate a condition which prima facie appears to run counter to the norm, nevertheless, the effective agreement between the parties does not prohibit such payment, nor is it unconscionable.

"It appears to us that in the present posture of these precedent Awards, the proper forum is the bargaining table."

In summary, Claimant is entitled to be paid three hours at straight time rate for services before her regular weekday starting time; in addition, seven hours and forty-five minutes at time and one-half rate, for services on rest day; seven hours and forty-five minutes at time and one-half rate, for services on holiday, less nine hours at time and one-half rate paid by Carrier.

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 the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent indicated in the Opinion.

A W A R D

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1969.