NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19648
THIRD DIVISION Docket Number CL-19509

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks, (Freight Handlers, Express & Station Employes (Missouri Pacific Railroad Company

STATEMENT OF CIAIM: Claim of the System Committee of the Brotherhood (GL-7006) that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement when effective Monday, June 1, 1970, at Tyler, Texas, it assigned a recurring call of two (2) hours at punitive rate to the occupant of Utility Clerk (2354).

2. Carrier shall be required to compensate Clerk J. A. Peery an additional six (6) hours at the time and one-half rats of pay beginning Monday, June 1, 1970, and to continue each Monday thereafter until the violation is corrected.

NOTE: Claim is to include any successor and/or successors to Mr. Peery, which, of course, can be determined by a joint check of Carrier's payroll records.

OPINION OF BOARD: Resolution of this dispute turns on the application of Rule 43. Rule 43, Notified or Called, reads as follows:

> "(a) Except as provided in Paragraph (b) of this rule, employes notified or called to perform work not continuous with, before or after the regular work period, or on Sundays and specified holidays, 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 a minute basis.
>
> (b) Employes who are called regularly on Sundays and specified holidays shall be allowed a minimum of eight (8) hours at time and one-half rate."

Claimant Peery is the occupant of Utility Clerk No. 2354 at Tyler, Texas. His assigned rest days are Sunday and Monday. With regularity he is called to perform the work of his own position on Monday, his second rest day. Carrier has been paying Claimant under the provisions of Paragraph (a) of Rule 43. The Organization contends that he should be paid under the provisions of Paragraph (b). Claim is for the difference between the amounts provided in Paragraph (a) and those provided in Paragraph (b). Among other arguments before this Board, the Organization relies on Award 7084 involving the same

rule between these same parties. It also relies on Award 7111 involving the Houston Belt & Terminal Railway Company which decided a dispute involving a rule identical to Rule 43.

Award 7084 reviewed the application of the Call rules which existed prior to September 1, 1949 and equated its provisions to the situation that existed after September 1, 1949 when positions were assigned two rest days rather than one. Award 7084 considered Rule 43 with Decision No. 5 of the 40-Hour Week Committee. Its concluding paragraph held:

> "That rule establishes the minimum pay allowance for three situations, to-wit, (1) employes called to work not continuous with but before or after their assigned hours, (2) employes called sporadically on Sundays or Holidays, and (3) employes called regularly on Sundays or Holidays. Since Sundays were generally the one rest day prior to September 1, 1949, referred to in Decision So. 5 of the 40-Hour Week Committee, it appears that under such decision the Sunday provisions of the call rule governing regularly recurring calls apply to both rest days, which arc Saturday and Sunday in this case. Since the service here involved falls within situation No. 3 above, governed by Rule 43(b), the claim must be sustained."

Award 7111, involving the same rule on a different Carrier, in lock step followed Award 7084. No contrary decisions have been cited. Under the principle of Stare Decisis, we will follow Award 7084 and sustain the claim. See also Award 17844.

In their submission before this Board, Carrier objects to that part of the Statement of Claim dealing with the successor and/or successors to Claimant. They argue that this portion of the Claim should be dismissed because it was not raised on the property. They further contend that the issue of successor and/or successors to claimant was abandoned by the Organization since they failed to progress it up to Carrier's Director of Labor Relations, Mr. 0. B. Sayers. We cannot agree with either of Carrier's contentions. The record clearly establishes that the Organization's original letter of claim to Carrier's Superintendent dated July 24, 1970 specifically made claim for the successor and/or successors to Claimant. The record reveals that at no time in handling on the property did any Carrier officer take exception to that portion of the claim. Thus the issue of successor and/or successors to Claimant was presented to Carrier's Superintendent. And since he and all subsequent Carrier officers failed to take exception thereto, the Carrier cannot be heard to do so at this late date. We will therefore allow that portion of the claim relating to claimant's successor and/or successors.

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 aver the dispute involved herein; and

That the Agreement was violated.

A W-A R D

Claim sustainad.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.