

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19917
Docket Number CL-20035

Burl E. Hays, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Belt Railway **Company** of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7219)
that:

1. The Carrier **violated** the **Contract** Agreement on May 31, 1971, by holding Clerk S. Elmore off his regular **position** on the Decoration Day holiday.

2. Clerk Elmore **shall** now be **allowed** eight hours' pay, **at** the applicable **holiday rate**, as well as **interim** **payment** at the current rate, on the amount of reparations due.

OPINION OF BOARD: The claim of the **System** **Committee** of the Brotherhood is that **the** Carrier on May 31, 1971, violated the Agreement of March 1, 1964, particularly the **Unassigned Day** Rule (38-j), the Overtime Rule (45-e), **and the** Notify or Call Rule (46-b).

The alleged violation by the Carrier occurred by holding Clerk S. **Elmore** off his regular position on the Decoration Day Holiday, and assigning the required duties **to** be performed that day to Ice House Foreman S. Campbell, incumbent of Position #233.

The duties of Claimant's position consist primarily of preparing notices of constructive placement and notifying Carriers patrons by telephone of any cars on hand on a daily basis Monday through Friday, his regular working days.

Carrier argues that the claim before the Board is not the same presented on the property because interest was later added to the claim; that the claim was not handled in the prescribed manner prior to being submitted to the Board, and should therefore be dismissed. **We** do not feel this constitutes sufficient grounds for dismissal of the claim. The subject matter of the claim has been the same throughout its handling, and the rights of the Carrier have not been prejudiced. **However**, since **the** interest portion of the claim was in fact never presented on the property and handled with Carrier in the usual manner, we feel we have no jurisdiction to consider the interest portion of the claim.

Carrier maintains that the work involved was not necessary to be performed on the holiday in question but that it was work that **had** been given

to the Ice House Foreman for a long period of time "to fill out his eight hour day".

There is a great deal of confusion as to whether or not the work performed was in fact "necessary" or "not necessary". We feel this is the issue upon which to determine whether or not there has been a violation of the Unassigned Day Rule (Rule 38-j) of the Agreement.

Confusion abounds. For instance, in Carrier's statement of position we find the following: "Carrier has consistently denied that any necessary work of Claimant's position was performed", and "Carrier asserts that Claimant's position could properly be blanked for the reason that it was not necessary work and on each Saturday, Sunday and holiday for the past ten or more years the incumbent of Position 8233 (Ice House Foreman) has been typing up whatever constructive placement orders were on hand in the **Agent's** Office." In Mr. **Hullett's** letter (Employees' Exhibit No. 2) to General Chairman W. C. **Mutzbauer**, dated July 26, 1971, in support of his denial of the claim, he states, in part . . . "this work in contention is performed by Mr. S. Campbell, Ice House Foreman, on Saturdays, Sundays and holidays, solely to prevent backlog of work from building up on Position #205 on Mondays....." (Underlining by the Board).

However, in the letter of Mr. J. **Overby**, Superintendent, (Employees' Exhibit No. 4) to the General Chairman, dated October 6, 1971, he makes this statement: "The work here in question does not have to be performed on Saturdays, Sundays and Holidays." And then again, Mr. C. M. Crawford, Director of Personnel, in his letter to the General Chairman dated January 18, 1972, stated: "There is no work 'necessary' on position No. 205 on these days", having just mentioned Saturdays, Sundays and holidays.

From reading and studying the entire record in the case it is the conclusion of the Board that some work was necessary to be performed on this Memorial Day Holiday. It is a well established fact that positions may be blanked on such holidays, but if work of the position is required to be performed the regular employee is entitled to be used. (Award #18805 by **Devine**. Also Award #19827 by **Blackwell**). The amount of work necessary to be performed is **immaterial** under these circumstances.

We feel that there has been a violation of the Unassigned Day Rule (38-j) of the Agreement in this case, and that Claimant is therefore entitled to pay for eight hours at the applicable holiday rate and the claim will be sustained to that extent. For reasons stated above the claim for interest 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

Claim is sustained to the extent indicated in Opinion.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.