NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20877
Docket Number CL-20813

THIRD DIVISION

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:
(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employes
(
(Camas Prairie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7604) that:

1. Carrier violated the Clerks' Rules Agreement at Lewiston, Idaho when it worked a furloughed employe in excess of five (5) days or forty (40) hours and failed to compensate him at the overtime rate of pay for work performed on one of his rest days.

2. Carrier shall now be required to compensate Mr. Larry Sullivan for an additional four (4) hours at the pro rata rate for the service performed on May 14, 1973.

OPINION OF BOARD: Claimant, a furloughed clerk, was assigned, pursuant to the pertinent rules of the Agreement, to the position of Billing-Division Clerk; which position is assigned to work Tuesday through Saturday with rest days of Sunday and Monday. He worked from Tuesday, May 8, 1973 through Saturday, May 12, 1973.

On Monday, May 14, 1973, Claimant performed work as Yard Clerk, and continued to work said position during that entire week (Monday through Friday), as well as forty (40) hours the next ensuing week.

Although it cites a number of rules provisions, the Organization's main contention stems from Rule 29(h):

> "(h) Best Days of Extra or Furloughed Employee:
> To the extent extra or furloughed men may be utilized under this agreement, their days off need not be consecutive; however, if they take the assignment of a regular employe they will have as their days off the regular days off of that assignment."

Because May 14, 1973 was a "day off" of the regular employee, the Organization argues that, under Rule 31, Claimant was entitled to time and one-half for the day.

Carrier resists the claim, stating that the "work week" for unassigned employees, under Rule 29(i) is a period of seven (7) consecutive days, starting with Monday. Carrier argues that Claimant falls within that Rule, and that he did not exceed forty (40) hours during the work week which commenced on Monday, May 14, 1973. Carrier also relies upon Rule 31(b) and (c):

> "(b) work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Rule 29(g).
>
> (c) Employes worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Rule 29(g)."

While the Awards cited by the parties have assisted our deliberations, we do not find that any of them are dispositive of the issue.

Certainly, an application of the rules in issue depends upon one's consideration of the contractual status of Claimant on May 14, 1973. If Claimant was moving to or from the furlough list on May 14, then, of course, he was not entitled to overtime. But, the Board feels that it must consider the Claimant's status under Rule 29(h). Under that language, we do not find that he had yet departed his previous assignment. In order to give the language of Rule 29(h) its complete meaning, we must consider that the Claimant reverts to a furlough status upon completion of the regular days off of the assignment he assumed on May 8, 1973. To rule otherwise would, in our view, unduly dilute the pertinent language of Rule 29(h).

It may be, as urged by Carrier, that a sustaining Award will, in the final analysis, dilute work opportunities for certain employees, and thereby operate to their detriment. Be that as it may, it is not a proper matter of contract interpretation to be applied by this Board.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.