

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24959  
Docket Number CL-24503

Rodney E. Dennis, Referee

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

PARTIES TO DISPUTE:

(  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9607)  
that:

1. Carrier violated the effective Clerks' Agreement when, on April 3, 1981, it failed to compensate Mr. J. A. Johnson at the time and one-half rate for service performed on the sixth day of his workweek;

2. Carrier shall now compensate Mr. Johnson for an additional four hours' pay at the pro rata rate of Position SK-39 for April 3, 1981.

OPINION OF BOARD: Claimant J. A. Johnson was assigned as an extra Board Clerk. He was guaranteed 40 hours of work in each workweek or compensation in lieu thereof. Claimant worked the following schedule during the workweek beginning March 28, 1981:

March 28 sick-allowed sick leave  
March 29 sick-allowed sick leave  
March 30 sick-allowed sick leave  
March 31 worked eight hours  
April 1 off  
April 2 worked eight hours  
April 3 worked eight hours

Claimant contends that he should be paid the punitive rate for April 3 because he was called and worked on his second rest day during the workweek. The Organization bases this claim on the fact that Claimant was paid for March 28, 29, and 30. When days worked, or hours worked, or rest days are calculated for the period, these three days must be counted as days worked. On this basis, Rule 42 (overtime) and Rule 43 (notified or called) justify time-and-one-half for the sixth day worked and not straight time.

Carrier contends that Claimant did not work over 40 hours in a week, nor did he work more than five days in a seven-day period. Carrier also argues that as an extra Board Clerk, Claimant is not assigned specific days off, but is entitled to two days off in seven or be paid at the punitive rate if worked.

This Board has reviewed the record of this case and must conclude that Claimant was properly paid.

The rules in question here contemplated hours and days actually worked. They do not allow time off when an employe is on paid sick leave to be counted as days worked, as the Organization contends. This Board has on numerous occasions stated that paid time off cannot be considered as time worked for overtime purposes. We see no reason to conclude otherwise in this case.

As to the Organization's contention that Claimant worked on his rest day, here, too, the Board does not agree. Claimant was not, under the situation present here, assigned a specific rest day. Claimant did not work the required days prior to April 3 in order to have April 3 qualify as a scheduled rest day.

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 Employe 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 14th day of August 1984.