

Award No. 2723

Docket No. CL-2767

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The employe relieving the Freight House Foreman at East St. Louis, Illinois, during his absence shall properly be paid time and one-half at the daily rate applicable to such relief position for work performed in excess of eight hours on any day and for Sunday and holiday service, and

(b) That C and D Allowance Clerk, Mr. L. J. Scully who relieved the Freight House Foreman at East St. Louis during his absence Monday, June 21, through Saturday, June 26, 1943, and was required to work one hour overtime on each of those days shall now be paid time and one-half at rate of \$7.86 per day for the overtime worked during that period and be paid similarly for any overtime worked after the eighth hour subsequent to June 26, 1943, while employed in that same capacity.

EMPLOYEES' STATEMENT OF FACTS: There is a position at East St. Louis Freight House designated as Warehouse Foreman, rate prior to December 27, 1943, was \$221.50 per month, plus \$8.28 covering each Sunday worked. Rate subsequent December 27, 1943, \$243.40 per month, plus \$9.00 payment for each Sunday worked. The foregoing monthly rate applies to the regular incumbent of the position, Mr. H. R. Evans. The Relief Foreman, Mr. L. J. Scully, is regularly assigned to position of C. and D. Allowance Clerk, rate prior to December 27, 1943, \$6.32 per day, and subsequent \$7.04 per day. Mr. Scully works the position of Warehouse Foreman when the regular Foreman is off duty and when working the position of Relief Foreman prior to December 27, 1943 was paid \$7.86 per day, week days and \$11.79 for Sunday service. Subsequent to December 27, 1943, Mr. Scully was paid \$8.58 per day, covering week days and \$13.08 covering Sunday or holiday service.

From Monday, June 21 through Saturday, June 26, 1943, a period of six days, Mr. Scully worked the Warehouse Foreman position as Relief Foreman and worked one (1) hour overtime on each of these days. All the platform forces are daily rated including Mr. Scully and all the platform forces who worked this one (1) hour overtime on these six days were paid overtime after the eighth hour excepting Relief Foreman Scully. Claim was filed on July 22, 1943 and appealed to the highest appeal officer of the carrier. The carrier declined to make proper payment of one (1) hour overtime to Relief Foreman Scully in accordance with Rule 26 of Clerks' Agreement, effective January 1, 1936. Under date of May 8, 1944, General Chairman Dollard wrote Vice President, Mr. F. D. Beale as follows:

"During 1943—August 28th to September 28th: The Freight house Foreman worked during week days from 8:30 A. M. until 6:00 P. M., and on Sundays from 7:30 A. M. until 5:00 P. M.

"During 1943—September 29th to November 22nd: The Freight house Foreman worked during week days from 7:15 A. M. until 6:00 P. M. and on Sundays from 7:30 A. M. until 5:00 P. M."

It is the position of the carrier that the claim is without merit and should be denied.

OPINION OF BOARD: The position of Freight House Foreman at East St. Louis, Illinois, is a partially excepted position covered by the Memorandum of Agreement dated January 13, 1941, but effective October 26, 1940. This Agreement provides that this position is excepted from Promotion Rule 8 and other specified rules; for instance, it also states, "It is also agreed that the hours of service rules will not be applied rigidly to the positions included in this list and that their hours of service will not be extended beyond what is necessary for the performance of their regular duties for the purpose of absorbing other schedule work."

A dispute arose as to the rate of pay a daily rated employee, covered by the current agreement, would receive when he worked relief on the regular position of foreman, and on December 23, 1940, the parties entered into the following special Agreement:

"In connection with the freight house foreman's rate at East St. Louis and in order to avoid any future question as to the method of compensating employees who relieve this position, it is agreed that when other relief employees are used relieving this position week days they will be paid \$7.06 per day, and when relieving Sundays and Holidays they will be paid \$10.59, with the understanding that this settlement shall not be applied to any other positions except by mutual agreement."

From June 21, through Saturday, June 26, 1943, L. J. Scully relieved the Freight House Foreman at East St. Louis, and during that time worked in excess of eight hours per day. Petitioner claims that Scully should be paid at the rate of time and one-half for all time worked in excess of eight hours per day. Petitioner bases its claim upon Rule 22 (eight hours constitute a day's work) and Rule 26 (work in excess of eight hours a day will be paid overtime and paid at the rate of time and one-half.)

The Carrier to sustain its position relies upon parts of Rules 27 (e), 29, and 30 (c).

These rules provided in substance that when a relief is needed he shall be paid at the rate of established pay for the position relieved, except when the relief employee's rate of pay is higher, and the relief employee must perform the "duties and responsibilities of the position during the time occupied"

The Freight House Foreman position is monthly rated, and the employees who relieve that position are daily rated.

The Board is of the opinion that the Agreement of December 23, 1940, supersedes the rules relied upon by the Carrier. It provides that "when other relief employees are used relieving this position week days, they will be paid \$7.06 per day," and on Sundays, \$10.59, or time and one-half. When the regular employee works on Sunday he is paid at straight time rate. It, therefore, contemplates that the relief employee works on Sunday at penalty rates while the regular employee does not receive penalty rates while working on Sunday.

This special agreement says the relief employe "will be paid \$7.06 per day," which means a day contemplated for a day-rated employe, which is eight hours (Rule 22). This is affirmed by the General Manager's letter of September 11, 1940, where he refers to eight hours.

There is no Sunday work involved in the time worked by Scully and the Board's opinion in reference to Sunday's work is reserved to such a time when it may be necessary for a decision.

It follows that the claim should be sustained for the days worked between June 21 and June 26, 1943, at the applicable rate then in effect. That is to say, that Scully should be paid for the ninth hour's work on the above dates at one and one-half the applicable rate in effect.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, approved June 21, 1934;

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

That the claim is sustained in conformity with the opinion.

AWARD

Claim sustained in conformity with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.