Award No. 2782
Docket No. CL-2749

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the carrier (Terminal Railroad Association of St. Louis) failed to properly compensate Wm. L. Head for service performed on Sunday, August 1, 1943, and, that he now be paid an additional four (4) hours compensation at the rate of $6.75 per day for service performed on that date.

EMPLOYES' STATEMENT OF FACTS: On August 1, 1943, Wm. L. Head was an extra or furloughed unassigned yard clerk subject to call to protect vacancies or extra work in the Wiggins East Side Yard Clerk's Seniority District.

C. E. Kroner holds the regular assigned position at No. 5 Yard, with assigned hours of 6:00 P. M., to 2:00 A. M., Sunday as day of rest. This is a continuous operation position and the regular occupant is relieved on his day of rest by a regular assigned swing man or an extra or furloughed man.

On July 31, 1943, Mr. Head was assigned to work the position at No. 5 Yard on Sunday, August 1, 1943 there being no regular assigned swing man assigned to relieve this position on the occupant's day of rest. Mr. Head reported for work at No. 5 Yard at 6:00 P. M. as he had been instructed to do. At about 10:30 P. M. Mr. Head was notified by the Agent in charge to leave this assignment and proceed to the office at North Dupo Yard, there to work the third shift from 11:00 P. M. to 7:00 A. M., the regular occupant of that position having notified the Agent that he would be unable to report for duty due to illness. He was informed that he would be allowed one-half hour in which to make the trip of about ten miles. Mr. Head carried out the instructions received from the Agent in charge of the district. On the date in question, Sunday, August 1, 1943, Mr. Head actually worked thirteen (13) hours or from 6:00 P. M. to 7:00 A. M. For this he received eight (8) hours pay at straight time and five (5) hours pay at time and one-half rate, hence the instant claim.

POSITION OF EMPLOYES: There is in effect an agreement between the parties bearing the effective date of February 1, 1922, from which the following rules are quoted:

"Rule 1. Employes Affected. These rules govern the hours of service and working conditions of the following employes, subject to the exceptions noted in Rule 2:

mittee, consisting of Messrs. Lueker, Doyle, Scott, Leonard, Werner, Gunther, and Mueller, it was pointed out that the prime object of the rule was to give the employes one day of rest in seven and not to increase their earnings."

EXHIBIT K

"The purpose of Rule 51 was to guarantee all employes one day of rest in seven, and if they were not granted this day of rest the company was to be penalized for not granting it."

This is a clear admission on the part of General Chairman Dwyer of the intent of our "day of rest" rules, which contemplate that each man will be given one day of rest in seven or allowed punitive time for the seventh day's work. It was never contemplated that any penalties would accrue to relief men or extra men incident to the application of the rules.

EXHIBIT L

"I might add that the proper application of this rule is being applied in all other departments of the T. R. R. A. where it is necessary to work employes on Sunday, and we must insist that it be applied accordingly in your department in the future."

This is a clear-cut admission on the part of General Chairman Dwyer of the intent of our "day of rest" rules and the propriety of the company's practices under those rules, except to the extent of their application in the Ticket Office. At that time, and continuously since February 1, 1922, no one was being allowed time and one-half payments under the "day of rest" rules unless they were worked seven consecutive days.

EXHIBIT M

"That it has been the past practice for employes to alternate hours of assignment weekly and that this practice shall continue as set forth in Paragraph 1 of this agreement."

No such arrangement would be permissible under the standard rule.

The main point we are endeavoring to emphasize is that in the case of the railroads parties to Decision No. 1621, the U. S. Labor Board promulgated a rule and it is quite proper that they and subsequent Boards interpret and construe the language of the rule, whereas in our case we adopted a rule after agreeing with the committee as to its scope and purpose. Also, through mutual arrangement, we put into effect some practices which are in fact deviations from the letter of our rule and we hold that, having agreed upon the intent of the rule in advance, the committee cannot now, with propriety, insist upon a different or more favorable (to them) interpretation.

The correspondence exchanged with the Clerks' committee at the time our "day of rest" rule was adopted indicates conclusively that our rule and the Labor Board rule are two separate and distinct entities notwithstanding the use of the Labor Board language in a part of our rule. That correspondence is shown as Exhibits Nos. 14 to 20, both inclusive. Still further and more convincing proof about the many differences in our rules and the standard Labor Board rule is contained in letters shown as Exhibits Nos. 21 to 25, both inclusive.

OPINION OF BOARD: The claim in this case was originally submitted on the property and to the Board on a completely different theory than it was submitted to the Referee. As this Referee sees it, if he were now to decide it on the theory on which it was submitted to him, he would be deciding a case which in reality was not submitted on the property or to the Board.

On account of the confused state of this record, fairness demands that the case be remanded with the right of the Employes to resubmit it.

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 employe 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 case should be remanded with the right of the Employes to re-submit it.

AWARD

Claim remanded with the right of the Employes to re-submit it.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.