Award No. 3842
Docket No. CL-3877

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

SOUTHERN AND PACIFIC LINES IN TEXAS AND LOUISIANA (TEXAS AND NEW ORLEANS RAILROAD COMPANY)

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

STATEMENT OF CLAIM: Claim of E. R. Manger, Clerk, Cashier's Office, San Antonio Freight Station, a position not necessary to continuous operation of the Carrier assigned Monday to Saturday, inclusive, for eight (8) hours at time and one-half rate when called to perform service from 3:00 P. M. to 4:40 P. M., July 7, 1946.

CARRIER'S STATEMENT OF FACTS: This case is from the San Antonio Freight Station on the Carrier's San Antonio Division.

E. R. Manger regularly assigned as Collector-Clerk, Position No. 68, Cashier's Department, San Antonio Freight Station, six (6) days per week Monday to Saturday, inclusive, 9:00 A. M. to 6:00 P. M., with one (1) hour for lunch, a position not necessary to continuous operation of the Carrier, was called on Sunday, July 7, 1946, to perform work in the Cashier's Department from 3:00 P. M. to 4:40 P. M. For this service of one (1) hour, forty (40) minutes, Manger was paid on the call basis—two (2) hours pay at time and one-half rate, the equivalent of three (3) pro rata hours which is the minimum specified in the Call Rule (Rule 37) of the Agreement for two (2) hours work or less.

Manger presented a claim for eight (8) hours pay and was notified by the Superintendent that his claim was corrected to allow two (2) hours call at time and one-half rate. A grievance was filed in behalf of Manger by the Division Chairman of the B of RC urging the payment of eight (8) hours at time and one-half rate. The Superintendent declined the claim and it was then appealed by the General Chairman to the undersigned by letter dated October 9, 1946, the General Chairman contending that Manger was entitled to a minimum day under Rule 27, Article V of the Agreement. After full investigation, the claim was declined to the General Chairman and he was told that Manger was used to perform work on Sunday, July 7, 1946, on the call basis to work one (1) hour, forty (40) minutes for which he was paid a minimum call of two (2) hours at time and one-half rate as prescribed by Rule 37, Article VI of the Agreement. The claim was discussed in conference on January 6, 1947 and the General Chairman was told that there was no rule under the Agreement supporting the claim. After a complete discussion of the case, the dispute remained unsettled. Following the conference, the position of the Carrier in declining the claim was reaffirmed by letter January 7, 1947. The dispute remaining unsettled is therefore referred to your Honorable Board for decision as contemplated in the amended Railway Labor Act.

That the Claimant is entitled under the provisions of Rule 20 (a) and Rule 30 (a) to be paid at the rate of time and one-half for eight hours for the work performed on the Sundays and holidays involved in this claim.

AWARD

Claim sustained."

Rule 20 (a), the 8-hour basic day rule, and 30 (a), the Sunday and holiday rule referred to in Award 3315 are similar in essence to Rule 27 and Article VII, respectively, of the T&NO Agreement currently in effect.

The claim of the Employes that Manger should be paid on a daily basis for services performed Sunday, July 7th, 1946 should be sustained, and the claim of the Carrier that his payment for such services on an hourly basis is authorized by the Agreement should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The position of E. R. Manger was a six-day position assigned Monday to Saturday, inclusive. On Sunday, July 7, 1946, Manger was called for service in the Cashier's department. He performed service from 3:00 P.M. to 4:40 P.M. For this service he was paid for two hours of time at the rate of time and one-half under Rule 37 of the current agreement, the pertinent part of which rule is the following:

"Rule 37. Notified or Called. Employes notified or called to perform work not continuous with, before, or after the regular work period shall be allowed a minimum of three (3) hours for two (2) hours work or less, and, if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

The Brotherhood contends that this rule has no application and that payment should have been made on the basis of a full eight (8) hour day at the rate of time and one-half.

In order to determine this dispute it becomes necessary to examine certain pertinent parts of the controlling agreement between the parties.

The agreement is one which became effective November 1, 1939 with later modifications.

Rule 37, quoted herein in part, was a part of that agreement and still is without change or modification.

The following were parts of the agreement but before the instant controversy arose they were removed:

"Rule 42. Seven Day Positions. Employes regularly assigned to full day service on Sundays and the following holidays, * * * shall be paid straight time rates for Sundays and holidays the same as on week days, when hours worked are those constituting the regular week day assignment.

"Note: It is understood that the above rule applies to the position and not to the individual. If a regularly assigned seven-day employe lays off on a Sunday or holiday, the employe filling his place will receive straight time for the regular working hours."

"Rule 43. Less Than Full Day Paid. Except as provided in Rule 42, employes notified or called to work on Sunday and/or on the following holidays, * * * shall be paid at rate of time and one-half with minimum allowance of two (2) hours for two (2) hours work or less, and, if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

"Rule 44. Day of Rest. So far as practicable, consistent with the requirements of the service, employes shall be allowed one day of rest in seven."

These three rules, which were all of Article VII of the agreement, were eliminated by Arbitration Board Award dated June 15, 1945, and the following new Article VII was substituted in their place:

"Sunday and Holiday Work. Work performed on Sundays and the following legal holidays * * * shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.

"Note: The effect of this rule shall not be to add to or take from the rights of the parties as set forth in Article I."

It will be observed that prior to June 15, 1945, the agreement had two separate call and overtime provisions. One was in Rule 37 and the other in Rule 43. The one in Rule 37 was general and we take it applicable unless restricted by other special provision or provisions.

The provision of Rule 43 was by its terms special and in terms had application to Sunday and holiday calls to employes not assigned to full day service on Sundays and holidays.

It will be observed that the call rate of pay under Rule 43 was less favorable to the employes than the rate under Rule 37.

With the substitution of the awarded Article VII for the old Article VII, the call rates of pay provision of Rule 43 were eliminated from the agreement. Instead, the new rule simply provided that "work performed on Sundays and the following legal holidays" under circumstances such as are now before this Board "shall be paid at the rate of time and one-half."

This new article was one proposed by the Brotherhood. What did the Carrier and the Arbitration Board have the right to assume was the purport of the proposal?

Since no exception or restriction was proposed to take the place of the restriction of Rule 43 or Rule 37 it appears logically, it would seem, that it was intended that resort should be had to what was left in the agreement, if there was anything, to ascertain the method for computation of compensation for calls under the new Article VII.

Following up this line of thinking it is observed that there are two rules dealing with payment for time of an employe used in excess of the hours of a position. The first is Rule 36. This rule is obviously not applicable. This is the strictly overtime rule.

Rule 37 is the Call Rule and under the circumstances it is believed that this one is controlling in computing pay for time worked on call on a Sunday or holiday.

Therefore, Claimant became entitled to pay for two hours at the rate of time and one-half for the work performed on the day in question.

This conclusion does not conflict with the opinion in Award 3054. The main difference is that there the call was for work in a position necessary to the continuous operation of the Carrier, that is 365 days a year. The one here was not such a position. The opinion there went to the point of saying that on a call to work on a position necessary to the continuous operation of the Carrier the assigned tour "must be deemed to have been assigned to per-

form the regular eight hour assignment for that day". No such assumption can attach to a call to duty on a position not necessary to the continuous operation of the Carrier.

Award 3315 is a reiteration of the conclusion of Award 3054. However, the dicta of the last two paragraphs of the opinion, which was not necessary to the determination in that docket, would seem to indicate that there was another reason for the award, namely that since there was nothing in the particular rule which provided for payment for less than eight hours work performed on the seventh day, hence the rules required payment for eight hours.

Limited to that particular docket and the agreement there considered the statement referred to may have been correct, but as a statement of general principle it is unacceptable. It must be true that under agreements arrived at agreeable to the Railway Labor Act the fundamental principle of contracts generally that all inter-related provisions of a contract, whether they be in a single paragraph, rule, article or section, or several, must be considered as a whole and also in their relation to each other. Certainly the controlling significance of a provision of a correlated agreement is that significance which flows when it is considered in its co-relationship with the other parts and the whole, and not that which may flow from the provision when considered separate and apart from the rest of the agreement if the two are different.

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, as approved June 21, 1934;

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

That the claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3842

DOCKET CL-3877

NAME OF CARRIER: Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company)

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

Upon application of the representatives of the Employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Brotherhood has requested an interpretation of this Award and as a basis for interpretation has propounded six (6) questions. While the Opinion on which the Award depends appears to this Referee to be clear and plain and self-explanatory, an effort will be made to clarify and interpret, to the degree possible, the points on which the Brotherhood appears to have some question:

The first question propounded is:

> "1. Does the Award contemplate and mean that the method of payment for less than full day service on Sunday and holidays was **in no manner** affected by the complete and unqualified elimination of Rule 43, the one rule which theretofore had specifically and exclusively governed the payment for such service?"

The answer is that Rules 42, 43 and 44, which were the old Article VII, were eliminated by the Arbitration Award at the instance of the Brotherhood and new Article VII was substituted therefore. The claim which was the basis for the Award herein was controllable and controlled by the agreement between the parties as integrated after the elimination of the old Article VII and the substitution in place thereof of the new Article VII.

The second question is:

> "2. When Rule 43 was taken from the Agreement, did its complete and unqualified elimination, per se, evidence an intent that the provisions of the eliminated rule were to remain in effect by interpretation of other portions of the Agreement (Rule 37)?"

The answer is that in the writing of the Opinion and the rendition of the Award here, no consideration was or could be given to the eliminated Article VII. The Opinion and Award were made to depend upon the integrated agreement between the parties in its form and substance as of the date that the claim arose.

The third question is:

"3. If so, does the Award contemplate and mean that Rule 37 governs the payment for services performed on all less than full day Sunday and holiday assignments? Specifically, does Rule 37 authorize the Carrier to assign and use all, a majority, or even only a part of the employes of a given station or department less than eight hours on a Sunday or holiday and pay them for such service as if in fact a call?"

The answer must be that this question is an academic one and any direct answer would have no pertinence to the specific inquiry presented by the claim. The Opinion and Award dealt with a particular subject matter and it is the opinion of this Referee that it received proper treatment under the controlling agreement.

The fourth question is:

"4. With respect to the following statement contained in the Opinion,

'IT WILL BE OBSERVED THAT THE CALL RATE OF PAY UNDER RULE 43 WAS LESS FAVORABLE TO THE EMPLOYES THAN THE RATE UNDER RULE 37.'

how and to what extent was the call rate of pay under Rule 43 less favorable to the employes than the rate under Rule 37? Specifically, in what sense was payment of two hours **at the time and one-half rate** for two hours' work or less under Rule 43 less favorable to the employes than payment of three straight time hours for two hours work or less under Rule 37?"

In answer to this question, in the first place this statement in the Opinion is surplusage and obiter dicta insofar as the decision upon the claim is concerned. In the second place the question fails to comprehend the true purport of the statement. The question apparently but incorrectly assumes that the statement has exclusive reference to the named notified or called rates of pay of the two Rules. In order to get the true meaning of the statement, Rule 43 must be read with Rule 42 with its note, since otherwise its full purport and content cannot be ascertained. Thus read, the true purport of the statement quoted from the Opinion becomes readily apparent.

The fifth question is:

"5. Does the Award contemplate and mean that Rule 43 was a restriction of Rule 37, in that, payment under Rule 43 was less favorable to the employes than under Rule 37, and that the elimination of Rule 43 in essence was but the elimination of a restriction of Rule 37?"

The answer, obvious from the content of the Opinion and Award and what has already been said herein, is that at the time the claim arose and at the time it was considered there was no Rule 43, hence the then integrated agreement was controlling.

The sixth question is:

"6. What is time 'in excess of the hours of a position,' as referred to in the Opinion, as distinguished from time 'in excess of eight hours on any day,' as dealt with in the Agreement? Specifically, does the Award contemplate and mean that less than full day service on Sundays and holidays is overtime, that is, time in excess of eight hours on any day, within the meaning of Article VI?"

The pertinence of this question to any issue involved herein is not made apparent. Any answer to it as propounded would amount to nothing more than

academic discussion of terminologies. The Opinion and Award have no contemplation other and different from their clearly expressed meaning.

Referee John W. Yeager, who sat with the Division as a member when Award No. 3842 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 24th day of June, 1948.