

Award No. 4135

Docket No. CL-4017

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier violated the Clerks' Agreement:

- (1) When, between August 1, 1937 and December 1st, 1941, it failed to compensate employe C. R. Carpenter, Chief Clerk employed in the Superintendent's Office at Denver, Colorado, for overtime worked Sundays and holidays, and effective January 5, 1945 failed and refused to properly apply the 1937 and 1941 National wage increases to his position, and
- (2) That employe Carpenter shall now be paid a call or three hours on each of 25 Sundays and seven recognized holidays in each twelve month period August 1, 1937 to July 31, 1941, a total of 96 hours per year or 384 hours for that four year period and eight Sundays and two holidays, or total of 30 hours for the period August 1, 1941 to November 30, 1941, or grand total of 414 hours at the pro rata hourly rate of his position, then 242.04 per month, the amount involved being \$491.63, and
- (3) That Mr. Carpenter's present monthly rate be increased \$5.90 per month effective January 5th, 1945.

EMPLOYEES' STATEMENT OF FACTS: On April 6, 1912, C. R. Carpenter was promoted to position of Chief Clerk to the Superintendent of the Northern Division at Denver, Colorado and from that to the present has filled that position, being carried on the pay rolls of the Colorado and Southern Railway as such on a calendar month basis and paid for all days in each calendar month, Sundays and holidays included, from April 6th, 1912 to date, and it is a firmly established fact that a calendar monthly rated position comprehends 365 days of service per year of 8 hours per day or 2920 hours, divided by 12 (the number of months in the year) gives an average of 243.33 paid for hours per month. Daily rated positions comprehend 306 days of service per year of 8 hours per day or 2448 hours and this divided by 12, gives an average of 204 paid for hours per month.

On August 1st, 1937 a board awarded all clerical positions an increase of 5 cents per hour to be applied so as to give effect to the number of hours comprehended by the rate applicable.

In December 1941 another board awarded all clerical positions an increase of 9 cents per hour retroactive to the months of September, October

and in a later conference we reached agreement made as per my letter of November 24, 1944.

The positions involved were properly increased under the 1937 and 1941 wage settlements, as the positions were at that time rated on the basis of 204 hours per month. They were not considered as being on an all services rendered basis of 243.33 hours per month until we reached an understanding and agreement in November 1944, and in reaching that agreement in November 1944, we agreed that we would apply the increases effective with the wage settlement of January 17, 1944.

Therefore, the request that we apply the agreement of November 24, 1944 retroactively to cover the increases of 1937 and 1941 is declined.

The understanding reached in our conferences was as outlined above, and I cannot understand how the employes can now make a request for this retroactive adjustment.

Yours truly,

(Signed) J. D. Walker."

The General Chairman did not take any exception to the statements we made in our conference and as confirmed in the above quoted letter, and he did not handle the matter further.

The present General Chairman, J. H. Moberly, however, filed a claim dated February 13, 1947, making specific claim in connection with this matter, covering claim of C. R. Carpenter.

Former General Chairman Pendleton verbally advised us on February 2, 1946, that he was not handling C. R. Carpenter's claim because of the understanding which we had reached as outlined in the foregoing quoted letters.

In view of the very definite understanding reached with former General Chairman Pendleton in connection with the application of the January 17, 1944 national wage award and the fact that claims had never been filed and handled by a representative of the Organization in connection with this matter until February 13, 1947, the claim as now presented to you should be denied.

While it may be true that C. R. Carpenter, as Chief Clerk to Division Superintendent, did work some Sundays for an hour or two in the morning and possibly did work some holidays for a similar period of time, he filed no claims in connection with payment for overtime, nor did he make any protest in regard to increases granted him from time to time under the awards as listed.

C. R. Carpenter is now attempting to file claims for calls for a period more than ten years ago. There is no record that would indicate what Sundays or holidays Mr. Carpenter may have worked. We do know that it is very rare that he works on a Sunday or a holiday now, notwithstanding that since the settlement of the January 17, 1944 award he is considered on an all services rendered basis.

In view of the lapse of time which has taken place in the filing of these claims and the very definite understanding had with the General Chairman who negotiated the agreement of December 30, 1941, and the settlement made in connection with the January 17, 1944 award, this claim should be declined.

OPINION OF BOARD: C. R. Carpenter, the Claimant, is now, and has been since April 6, 1912, a monthly rated employe holding the position of Chief Clerk in the Office of the Superintendent at Denver, Colorado. In such position it has, during all of that period, been his duty and responsibility "to certify as to the correctness of rates of pay * * * of every employe carried on the payrolls coming under the supervision of the Division Superintendent".

Prior to 1944 all general wage increases in hourly rates were applied by the Carrier to monthly rated employes on the basis of 306 days per year or 204 hours per month. The same basis was used in applying the general wage deductions of 1921 and 1932.

After the general wage increase of January 17, 1944, the parties agreed in November, 1945, that said increase should be applied to such monthly rated employes on the basis of 365 days per year or 243.33 hours per month, retroactive to January 17, 1944. The General Chairman, on November 6, 1945, requested of the General Manager of the Carrier that the wage increases of 1937 and 1941 be applied in the same manner. This request was refused by the General Manager December 14, 1945.

On January 5, 1945, the Claimant had written a letter to the General Manager and asked that said letter be considered as his claim for the difference in the wages he received under the 1937 and 1941 wage increases on basis of 204 hours per month and what he would have received had the increase been calculated on the basis of 243.33 hours per month. In that letter he stated that he had never "been on a 204-hour per month assignment". This claim was promptly denied by the General Manager.

A year later, January 4, 1946, the Claimant in another letter to the General Manager stated that he was "herewith withdrawing my claim of January 5, 1945, entirely, and in lieu thereof now file with you my claim for the following authorized overtime worked over and above the 204 hours per month from August 1, 1937, to December 1, 1944". The letter then set out in detail such overtime consisting of calls on Sundays and holidays during that period. This claim was denied January 14, 1946. Some time thereafter the claim as now before us was filed by the General Chairman.

If we accept only statements of the Organization and of the Claimant we find no basis for approving this claim. An employe such as Claimant on a monthly rate which covers all services is paid for all Sundays and holidays. He is, therefore, of course, not entitled to pay for a "call" for Sunday or holiday work.

This record is filled with statements by both the Organization and by the Claimant that he was carried on a calendar month basis and paid for all services rendered.

In its reply to Carrier's answer to the Organizations Rebuttal, the Organization in excusing claimant for not having kept a record of his time worked on Sundays and holidays said:

"The fact of the matter is that during all that period (August, 1937 to December, 1941) Carpenter knew that he was being carried on a calendar month basis and paid for all services rendered and, of course the Carrier did not then and never has required that a record be kept of time worked by monthly rated employes when required to work on Sundays, holidays, or any other time outside of regular working hours."

The reason the Carrier did not require a record of such work is obvious. They were not required to pay extra for such work performed by such monthly rated employes. As Exhibit "A" to this same reply of the Organization we find the affidavit of the Claimant executed March 22, 1948, in which Claimant says under oath that from April 6, 1912, to the date of the affidavit he had been "continuously carried on the payroll of the Colorado and Southern Railway Company on a calendar month basis of 365 paid for days per year of 2920 hours or 243.33 average hours per month, at the monthly rate currently in effect, Sundays and holidays being paid for whether worked or not. On the above basis I am paid for all services rendered; no overtime having been shown or allowed on the pay rolls for any time worked on Sundays, holidays, or after working hours, under this method of payment".

In the face of this sworn statement of Claimant we cannot allow a claim for services rendered by him on Sundays and holidays as a "call" under Rule 43 of the Current Agreement.

Nor can we on the claim before us consider the question of whether the Carrier paid Claimant the proper monthly rate during that period. The Claimant presented that question to the Carrier in his letter of January 5, 1945. The claim presented to the Carrier in that letter was entirely withdrawn by the Claimant on January 4, 1946. That claim was never presented to this Board.

While the procedure of this Board should not be overly strict, orderly procedure requires us to limit our decisions to the questions presented by the claims filed here for our consideration. To hold otherwise could lead only to confusion and chaos.

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 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

The Carrier did not violate the Agreement as claimed.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1948.