

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY (Lines East)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that employe Marvin D. Brick, regularly assigned to Account Clerk's position, No. H-20, rate \$9.20 per day, in the General Accounting Bureau, Fullerton Avenue, Chicago, Illinois, be compensated at the penalty rate of time and one-half for three hours (1:30 P. M. to 4:30 P. M.) Saturday, January 26, 1946, or a total of \$5.18, account of being required to perform work at the Pullman Company plant, located at Kensington, Illinois.

JOINT STATEMENT OF FACTS: Employee Marvin D. Brick was the regular occupant of Position H-20, Accounts Clerk and Timekeeper, in the General Accounting Bureau, Fullerton Avenue, Chicago, Illinois, rate: \$9.20 per day. The bulletin advertising Position H-20 showed the hours of assignment as 8:30 A. M. to 5:00 P. M., exclusive of the meal period, daily except Sundays and holidays. By practice, the employes of this bureau are excused on Saturday afternoon at 1:30 P. M. in accordance with the provisions of Rule 52.

On Saturday, January 26th, 1946 employe Brick, at the direction of the Management, was assigned to perform work in connection with the taking of inventory at the Pullman Company Plant at Kensington Station, Chicago, Illinois. He was engaged in this work from 10:00 A. M. to 4:30 P. M. The inventory involved material and supplies of the Pullman Company (sleeping car operations) in connection with sale of that Company to a group of railroads.

POSITION OF EMPLOYES: There is in existence between the two parties an Agreement bearing the effective date of January 16, 1946.

Rule 3 of that Agreement establishes seniority for the employes in the seniority district and on the roster to which assigned.

Rule 4 establishes seniority districts, which includes District No. 73, the district in which employe Brick holds seniority.

Rule 7 provides for promotion of the employes, which shall be based on seniority, fitness and ability.

Rule 9 provides for the bulletining of positions and the assignment thereto.

arbitrary, the Carrier cannot be held to have violated Rule 52. We maintain that the Carrier's action in retaining employe Brick on duty on Saturday afternoon, January 26th, 1946, cannot properly be determined to have been arbitrary because:

1. It was necessary that this inventory be taken on January 26th, 1946.
2. The responsibility of seeing that the inventory was accurate was a duty of the Accounting Department and the use of employe Brick and other Accounting Department employes for this work could not have been avoided.

In summarizing its position the Carrier maintains that:

1. There was no violation of Rules 3, 4, 7 and 9 and we feel we have advanced sufficient argument previously in our position to fully support that contention.

2. There is no basis for the penalty payment claimed in behalf of employe Brick because: (a) Rule 30 (b) provides that the time and one-half rate will apply only to "time in excess of eight (8) hours" and there is nothing in the agreement which reduces that period below eight hours; (b) employe Brick did not perform work in excess of eight hours on January 26th, 1946, nor beyond the hours of his regular eight hour assignment to which his daily rate of \$9.20 applied; (c) payment in addition to the straight time rate for work which employe Brick performed between 1:30 P. M. and 4:30 P. M. on January 26th, 1946, which period is within the regular hours of his assignment, is not provided for in the agreement and such payment would be in conflict with the provisions of Section 4 of the agreement signed at Washington, D. C. on January 17th, 1944.

3. There was no violation of Rule 52 because it was necessary that the Accounting Department of the C. M. St. P. & P. RR. Co. arranged to have performed, on Saturday, January 26th, 1946 its proportion of the work involved in taking the inventory at the Pullman Company Plant, and that work **could not be deferred** because it had to be done at that time, therefore the **employe could not be excused without detriment to the service.**

4. Rule 52 does not support the penalty payment claimed. We adhere to the contention that Rule 52 does not provide for any payment whatever. The rule is not a "pay" rule but the language of that rule does, of course, require the exercise of judgment on the part of the Carrier and unless it can be properly held that the Carrier acted arbitrarily in its exercise of judgment, then, and only then, could there possibly be any penalty allowable under Rule 52. We contend there was no arbitrary or improper exercise of judgment by the Carrier in the use of employe Brick for the inventory work on January 26th, 1946.

We respectfully request that the claim be declined.

OPINION OF BOARD: The claim is for three hours' pay at the rate of time and one-half for work performed at the Pullman Company plant from 1:30 to 4:30 on Saturday afternoon, January 26, 1946. Claimant, on that date, was regularly assigned to Account Clerk's position H-20, Accounts Clerk and Timekeeper, in the General Accounting Bureau, Chicago, Illinois. By practice, the employes of this bureau are excused on Saturday afternoon at 1:30 P. M. in accordance with the provisions of Rule 52 of the Agreement between the parties.

The claim here involves the same organization and carrier, the same rules, and the same general question that were involved in Award 4364; the principles enumerated there apply to this claim. The question remains, however, whether claimant could have been excused from work on Saturday afternoon, January 26, without detriment to the service; the Board finds that he could have done so. The work in question had little if anything to do with the service of the carrier; it was concerned with the inventory of material and supplies of the Pullman Company in connection with the sale of that company to a group of railroads. The inventory was not a part of

claimant's regular assignment, and, in addition, the work was performed off the Carrier's property and miles from the office where claimant regularly worked. The Board does not believe that the term "detriment to the service" was intended to apply to any and all service of the carrier which must be performed on Saturday afternoon, without regard to location, seniority, or work of specified positions.

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 Employee involved in this dispute are respectively carrier and employee 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 Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.