Award No. 4750
Docket No. CL-4814

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the rules of the Clerks' Agreement when it declined to pay certain employes at New Orleans, La., who are covered by the Clerks' Agreement, a full day's pay for Friday, September 19, 1947, when such employes were prevented from performing their assigned normal duties for the Carrier due to the fact that the City of New Orleans. its surrounding territory and its inhabitants were affected by a hurricane on the date in qeustion, and

(2) That the 154 named employes who were regularly assigned to six and seven day positions, be reimbursed for wage losses sustained by such employes on the date in question (September 19. 1947).

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, effective June 23, 1922, revised September 1, 1927, containing 64 rules. Rules 1, 28, 34, 42, 43 thereof read as follows:

> RULE 1—Scope—These rules shall govern the hours of service and working conditions of the following employes, subject to the Exceptions noted below:
>
> (1) Clerks — (a) Clerical workers (b) Machine Operators.
>
> (2) Other office and station employes such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.
>
> (3) Laborers employed in and around stations, storehouses and warehouses.
>
> RULE 28—Days Work—Except as otherwise provided in these rules, eight (8) consecutive hours exclusive of meal period shall constitute a day's work.
>
> RULE 34—Reporting and Not Used—Employes required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held with a minimum of two (2) hours.
>
> If worked any portion of the day, under such conditions, up to a total of four (4) hours, a minimum of four (4) hours shall be allowed.

In Third Division Award 1412 involving the same parties to this dispute, the Board, assisted by Referee Royal A. Stone, stated:

"The basis of the claim is Rule 43. In its first paragraph that Rule deals with employes and provides for their compensation. The second paragraph reads as follows:

'Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.'

"That guarantee runs personally to the incumbent of a position rather than impersonally to the job itself. That quite aside, there is nothing in the Agreement which makes mandatory the filling of a position when its regular occupant absents himself as briefly as was the case here."

In the instant case the employes who were assigned to six-day positions and reported for work were compensated for four (4) hours if they worked four (4) hours or less and eight (8) hours if they worked more than four (4) hours. It therefore, follows that Rule 34, by virtue of the specific provisions thereof, takes effect when the specific conditions enumerated therein make their appearance, and, this being so, there can be no valid claim for any six-day employe who absented himself from his assignment by reasons of the conditions which existed and which were by their nature beyond the control of the Carrier.

In summation, the Carrier asserts that the provisions of the existing agreement were complied with in conformity with the reasoning advanced in Award 3661 and 1412 involving these same parties, and the claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On September 19, 1947, a hurricane struck New Orleans, Louisiana. Certain employes of the Carrier were not compensated for a full day's work, some working only a part day and some not reporting for work at all because of the hurricane. The Organization contends that under controlling rules these employes are entitled to be reimbursed for wage losses sustained on that day.

The dispute involves an interpretation of Rules 34, 42 and 43 of the current Agreement. These rules provide:

"Rule 34. Reporting and Not Used.

Employes required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held with a minimum of two (2) hours.

If worked any portion of the day, under such conditions, up to a total of four (4) hours, a minimum of four (4) hours shall be allowed. If worked in excess of four (4) hours, a minimum of eight (8) hours shall apply.

All time under this rule shall be at pro rata.

This rule does not apply to employes who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employes who lay off of their own accord before completion of the day's work."

"Rule 42. Sunday and Holiday work.

Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), 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."

"Rule 43. Basis of Pay.

Employes covered by groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly, or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly, or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

This Division has previously decided that Rule 34 has no application to employes included within Rules 42 and 43. Award 3661. That award also holds that Rule 43 expressly covers employes in Groups 1 and 2 of Rule 1. The claimants in the present case are daily rated employes within Groups 1 and 2 and, consequently, not subject to the provisions of Rule 34. This leaves Rule 34 free to operate in the field outside of Groups 1 and 2, as set forth in the Scope Rule.

The claimants being employes within Rules 42 and 43, the Carrier is obliged to keep their employment uninterrupted by providing six days' work per week except in weeks containing a holiday. The exception contained in Rule 34 not applying to these employes, the guarantee of six days' work is applicable.

However, the guarantee rule requires only that the Carrier provide employment for the stipulated period. It does not require the Carrier to pay an employe who is not ready and willing to work. It goes without saying that an employe who does not report for work or otherwise make himself available, can gain nothing under Rule 43. The record here shows many employes that did not report for work or otherwise make themselves available to perform it. These employes assert that they followed the advice of the Mayor of the City and remained at home until the hurricane subsided. We must point out that a Mayor or other public official cannot change the Agreement or countermand orders of the Carrier. One who accepts such advice adopts it as his own without in any manner changing the effect of the collective Agreement. We hold that employes failing to report or otherwise making themselves available, do not have a valid claim. The claims of employes listed in Groups 6 and 7 of Employes' original submission will be denied. The claims of those listed in Groups 1, 2, 3, 4, 5 and 8 will be sustained.

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 Agreement was violated to the extent shown in the Opinion.

AWARD

Claim sustained per Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.

Dissent to Award 4750, Docket CL-4814

As a premise to this Award, the Opinion declares Rule 34 has no application to employes included within Rules 42 and 43. That declaration represents misinterpretation of the agreement, as neither of those rules nor any other in the agreement contains any provision for such exception of the application of Rule 34, and any practical consideration of the many circumstances where employes subject to Rules 42 and 43 may be prevented from performing service by conditions beyond control of the Carrier, thus also making them subject to the provisions of Rule 34, gives proof that such employes are not excepted from the application of the latter rule.

Rule 34, titled "Reporting and Not Used," is all embracive as to its object, viz., its stipulation that when required-reporting employes are prevented from performing service by conditions beyond control of the Carrier, such employes would receive payment therefor as specified and the Carrier, of course, would not be obligated for any payment in excess of that specified.

That rule, because of its stipulated agreement for pay for time held (if necessary without work), was not intended to be modified by Rule 42, 43, or other rules of the agreement relating to periods of and pay for time worked.

The Award leading from such error in premise results in unawarranted penalty upon the Carrier.

/s/ C. P. Dugan
/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. C. Cook
/s/ J. E. Kemp