

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—(Eastern Lines)

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

(a) Mr. Geo. C. Couch shall be paid on the basis of time and one-half at the rate \$8.41 per day for all time in excess of eight (8) hours per day, computed from the starting time of his first tour of duty on September 27, 1946; and,

(b) Mr. Geo. C. Couch shall be paid on the basis of time and one-half at the rate of \$8.41 per day for the seven (7) hours five (5) minutes service he was required to perform on his regularly assigned seventh day off duty, Sunday, September 29, 1946.

EMPLOYEES' STATEMENT OF FACTS: Mr. Geo. C. Couch was the occupant of Yard Clerk Position No. 695 at Independence, Kansas, on September 27, 1946. The assigned hours of Position No. 695 on that date and prior thereto had been 12:05 A.M. to 8:05 A.M., rest day Sunday. Effective September 27, 1946, the assigned hours of this position were changed to 11:10 P.M. to 7:10 A.M., the rest day, Sunday, remaining unchanged. Because of this change in the assigned hours of Position No. 695 the incumbent was required to work from 12:05 A.M. to 8:05 A.M. on September 27, 1946, and then return to duty at 11:10 P.M. the same date, resulting in his working eight hours fifty-five minutes in one day, or a twenty-four hour period computed from the starting time of his first tour of duty, for all of which he was compensated at pro rata rate.

Moreover, this change in the assigned hours of Position No. 695 resulted in Mr. Couch working seven hours ten minutes on his regularly assigned seventh day off duty, for which service he was paid at the pro rata rate instead of time and one-half as required by the rules. The following statement clearly illustrates the overtime service performed by Mr. Couch on Friday, September 27, as well as the service he performed on his regularly assigned seventh day off duty:

Day	Date (Calendar Day)	Hours Worked Each Calendar Day	Payment Due
Monday	9-23-46 (1st Day)	12:05 A.M. to 8:05 A.M.	8'00" pro rata
Tuesday	9-24-46 (2nd Day)	12:05 A.M. to 8:05 A.M.	8'00" " "
Wednesday	9-25-46 (3rd Day)	12:05 A.M. to 8:05 A.M.	8'00" " "

5. Third Division Award No. 2030 which the Organization is citing in support of this phase of the dispute involves the Clerks' Agreement on the Chicago, Rock Island and Pacific Railway Company. Clerks' Rock Island Agreement Rule No. 49 which was comparable to Clerks' Santa Fe Agreement Article VII, Section 1, does not contain the exception appearing in the Clerks' Santa Fe Agreement Article VII, Section 1, which is referred to in Item 4 herein.
6. Third Division Award 3214 which was cited by the Organization in support of this phase of the instant dispute has no bearing whatever on this dispute as it involves only those Santa Fe employees who are covered by Clerks' Santa Fe Agreement, Article VI, Section 5, which has reference to the payment of certain unassigned Class 3 employees only.

The fact of the second phase of this dispute being as follows:

7. The claimant worked a Saturday assignment beginning at 11:10 P.M. on Saturday, September 28, 1946 and ending at 7:10 A.M. on Sunday, September 29, 1946. The Organization is contending that the time worked from 12:05 A.M. to and including 7:10 A.M. on Sunday morning, September 29, 1946 is work which should have been paid at the rate of time and one-half instead of at straight time under Article VIII of the Agreement.
8. Third Division Award No. 398 has held that:

"A shift commencing on Saturday and ending on Sunday is a Saturday assignment and rules providing for punitive payment are not applicable in this instance."

9. The claimant performed no service whatever on a Sunday assignment on Sunday, September 29, 1946.

The Carrier maintains that both phases of this claim should be denied as they can only be construed as an attempt to secure payments to the claimant employee not called for by the collective bargaining agreement in effect.

OPINION OF BOARD: On Friday, September 27, 1946, the claimant worked the hours of his assignment, 12:05 A.M. to 8:05 A.M. for which he was allowed eight (8) hours' pay. The claimant worked his new assignment starting at 11:10 P.M. Friday, September 27, 1946, and ending at 7:10 A.M. Saturday, September 28, 1946, for which he was allowed eight (8) hours' pay at the pro rata rate. The claim is that the time worked from 11:10 P.M. September 27, 1946 to 12:05 A.M. September 28, 1946, a total of fifty-five (55) minutes, is time worked in excess of eight (8) hours in a twenty-four hour period, and that the claimant is entitled to payment for this fifty-five (55) minute period at the rate of time and one-half. The Organization relies upon Article VI, Section 1, and Article VII, Section 1, of the current Agreement, which provides as follows:

"Article VI, Section 1. Except as otherwise provided in these rules, eight (8) consecutive hours work, exclusive of the meal period, shall constitute a day's work."

"Article VII, Section 1. Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, continuous with and outside of regular assigned hours, on any day, will be considered overtime and paid on the actual minute basis, at the rate of time and one-half."

This question, involving the interpretation of these Rules, has been considered by the Board. Awards 3214, 4201, 4202, 4203, 4835, 4836 and 4837. The Board has held that with reference to unassigned extra employees that

a day is to be considered as a twenty-four (24) hour period. In this case the twenty-four (24) hour period must be computed from 12:05 A.M., Friday, September 27, 1946, and the claimant has worked fifty-five (55) minutes in excess of eight (8) hours in a "day" and must be compensated for this time at the penalty rate. The Carrier has not advanced any reasons why the same interpretation should not apply to regular employees that applies to unassigned extra employees. Article VI, Section 6-a, cited by the Carrier, is not relevant to this question, which deals with compensation to be paid to employees under the facts here presented.

With reference to the Organization's claim that the Carrier is required to pay the claimant for seven (7) hours and five (5) minutes service on Sunday, September 29, 1946, it is not disputed that under the established practice a shift commencing on Saturday and ending on Sunday is considered as a Saturday assignment, and the Rules providing for punitive payment for Sunday assignments are not applicable. There is no Agreement Rule requiring payment at the rate of time and one-half for the seventh day as here claimed.

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 Employees involved in this dispute are respectively carrier and employees 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.

AWARD

Claim (a) sustained. Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.