Award No. 5568
Docket No. CL-5514

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement on the Cincinnati Union Terminal Company property at Cincinnati, Ohio:

(a) When it required Ticket Clerks B. Johnson and E. Kroeger to work on a call basis July 2, 1947, and

(b) When it required Ticket Clerks R. Coursey and J. Fleming to work on a call basis July 3, 1947, and

(c) When it required Ticket Clerk J. Getzendanner to work on a call basis July 6, 1947, and

(d) That the above-mentioned employes on the dates specified shall each be compensated the difference between eight (8) hours at overtime rate and what they were paid under the Call Rule which was time and one-half for the actual hours worked, and

(e) That other employes occupying positions necessary to continuous operation of the carrier shall be paid in the same manner on any subsequent dates when similarly worked on their assigned rest days to and inclusive of August 31, 1949.

JOINT STATEMENT OF FACTS: The Ticket Clerks involved in this dispute prior to September 1, 1949, occupied positions necessary to continuous operation of the carrier and were assigned one regular day of rest in seven, on which rest day the position was worked by regular assigned relief Clerks as provided in Rule 29. As of July, 1947, their regular assigned hours and days of rest were as follows:

NAME	ASSIGNED HOURS	REST DAY
E. Kroeger	7:00 A.M. to 3:30 P.M.	½ hr. Lunch Wednesday
B. Johnson	3:30 P.M. to Midnight	" hr. Lunch Wednesday
R. Coursey	6:30 A.M. to 3 P.M.	" hr. Lunch Thursday
J. Fleming	4:30 P.M. to 1 A.M.	" hr. Lunch Thursday
J. Getzendanner	7:30 A.M. to 4 P.M.	" hr. Lunch Sunday

provide that a full day's payment will necessarily be made at the rate of time and one half, with whatever degree of regularity the Sunday work may be required." (Underscoring by the Carrier.)

Third Division Award 2622 Referee Parker denied claim of a dispatcher for emergency call on his rest day and ruled in part:

"An elementary rule applicable to the construction of all contracts and agreements is that the rights of the parties thereto are to be determined by the language to be found in the instruments themselves. Otherwise stated, contractural rights are to be determined from the four corners of the agreement executed by the parties. Unless language expressly or implicitly authorizing payment of eight hours pay at rate of time and one half for service on petitioners rest day can be found in the agreements themselves, it is not within the province of the powers of this board to read into them any such meaning or import. To adopt the practice of broadening or extending the terms of any instrument by a tribunal such as ours will only lead to confusion and uncertainty and ultimately to injustice and hardship to both employe and carrier."

SUMMARY

In closing Carrier contends claimants were properly paid and also directs attention to the following facts:

1. Rule 27 does not guarantee an employe eight hours pay when called as claimants were called.
2. Rule 29 does not guarantee an employe eight hours pay. Rule 29 was not violated as Carrier did not blank any position and all positions were filled seven days per week.
3. Claimants were paid according to long established practice under rules agreement.

The carrier submits that it has conclusively established that it has complied with the agreement in every respect in the instant case and for the above reasons, respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises prior to the institution of the 40-Hour Week. The Claimants, ticket clerks, assigned to positions necessary to the continuous operation of the Carrier were required to work on their assigned rest days to assist in additional work necessitated by July 4, 1947 travel. On the days worked by Claimants, the relief employes regularly assigned to fill Claimants' positions on their rest days worked the full eight hours of their assignment. Claimants were released before they had worked a full eight hours on the days involved and Carrier paid them on the basis of Rule 30 (Call Rule). Employes assert they should have been paid for a full eight-hour day and cite particularly Rule 27 and Rule 29. Carrier relies on Rule 30. The involved rules read as follows:

"RULE 27—DAY'S WORK

Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work for which eight (8) hours' pay will be allowed."

"RULE 29—SUNDAY AND HOLIDAY WORK

(a) 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.

(b) When a regularly assigned employe has an assigned relief day other than Sunday, and one of the holidays specified in paragraph (a) of this Rule falls on such relief day, the day following will be considered his holiday."

"RULE 30—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 hours' work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis.

Employes called to work on Sundays or specified holidays on positions not necessary to the continuous operation of the carrier, shall be allowed a minimum of four (4) hours at time and one-half rate for four (4) hours or less work, and if worked over four (4) hours, a minimum of eight (8) hours at time and one-half shall be paid."

In considering the application of these rules to the instant claim it is important to bear in mind that the seven-day positions here involved were filled for the entire day by the regularly assigned relief employes. Hence, the question of blanking a position necessary to the continuous operation of the Carrier for all or a portion of a day is not involved in this docket.

Rule 29 requires that employes necessary to the continuous operation of the Carrier who are required to work on the regularly assigned seventh day off duty will be paid at the rate of time and one-half time. It, however, makes no reference to a guaranteed number of hours when such employes are required to work on their rest days. By awards of this Board rules similar or identical to Rule 29 have been construed to mean that where the regularly assigned employe on a position necessary to the continuous operation of the Carrier is required to work his regular assignment on his rest day, he is entitled to eight hours' pay at the time and one-half rate. (Award 3054). This, of course, is a derivative from those awards which have held that seven-day positions may not be blanked in whole or in part on the assigned rest day of the regular occupant (Awards 561, 3891). Those awards are not applicable to the factual situation presented in this docket.

Although Rule 29 makes no provision for a guaranteed number of hours' work when an employe necessary to the continuous operation of the Carrier is required to work on his rest day, the Employes argue, in effect, that the provisions of Rule 27 reach over and require the payment of a minimum day. Such contention with respect to the meaning of a rule containing language similar to Rule 29 was made by the Employes in the argument of the docket on which Award 2622 was based and rejected by the Writer of that Award in the following language:

"* * * Unless language expressly or impliedly authorizing payment of eight (8) hours' pay at rate and one-half for service on petitioner's rest day can be found in the agreements themselves it is not within the province of the powers of this Board to read into them such meaning or import. * * *"

It does not appear that there was a rule similar to Rule 30 in the Agreement involved in Award 2622. That, however, makes a stronger case for the rejection of the Employes' contention with respect to the combined effect of Rules 27 and 29 for in Rule 30 there is a formula for payment of employes having a regular work period when called to perform work not continuous with, or before or after the regular work period. The Rule does not confine the time of the call to any definite number of hours before or after the regular work period. It doesn't require that it be on the same calendar day of the regular work period. There is clearly room fo a fair inference that the rule was designed to cover a situation such as this. However, we need not base our decision on that ground alone. Conceding a certain amount of ambiguity in the Agreement because of possible conflict in the wording of the three rules involved, the practice on the property of paying regularly assigned employes when called to perform work in situations like that here involved since 1933 under Rule 30 is determinative of the true intent of the parties. The fact that the second paragraph of Rule 30 was added to the Rule under the July 1, 1946, Agreement does not affect this conclusion since the added paragraph covers a different situation and affects a different group of employes. It follows that the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of November, 1951.