

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Hornell, New York, when it required Assistant Foreman A. T. Burnett to work on his assigned rest days, February 19 and 26, 1951, and holiday, February 22, 1951, for which service he received no compensation, and,

(a) That Carrier shall now compensate Claimant Burnett for 9 hours on February 19, 10 hours on February 26, his regularly assigned rest days, and 8 hours on February 22, 1951, a holiday, at time and one-half rate, in addition to compensation received, and

(b) That all rest days or holidays worked by Claimant subsequent to the above dates be compensated for at time and one-half rate, in addition to monthly rate, until such time as the violation complained of is discontinued. (File 983).

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, position of assistant foreman, assigned to Mr. A. T. Burnett, worked nine (9) hours per day six (6) days per week, Sunday being the regularly assigned rest day. Effective September 1, 1949, Mr. Burnett's assignment was changed to a five (5) day week, with Sunday and Monday as rest days. This position was at that time subject to the provisions of Rule 20 (c).

Effective September 1, 1949, paragraph (c) was eliminated from Rule 20 in the Clerks' Agreement, as all positions thereunder were then subject to the hours of service and other rules of the Agreement, and such positions were placed on a five (5) work day basis, in accordance with Rule 20-2(a). The position in question is covered by all the rules of the Clerks' Agreement and service on rest days and/or holidays is subject to compensation at the penalty rate, over and above the monthly rate of pay.

In handling this case with the local officials, the parties entered into a joint statement of facts, which provided that "A. T. Burnett is an Assistant Foreman (an X-4 position) at Hornell New York Transfer, regularly assigned to work five (5) days per week, Tuesday thru Saturday, with Sunday and Monday as rest days. He is paid a monthly salary which includes fourteen (14) comprehended overtime hours per month as outlined in Memorandum of Agreement dated August 31, 1949. During February 1951, he

induced by the Organization concerning the application of the comprehended overtime hours to any and all overtime worked during the month.

While the preceding paragraph deals with facts and circumstances not here material, the point is that if the Organization is permitted to repudiate one Memorandum Agreement what is to stop them from repudiating any other agreements? The Organization should not be permitted to escape its responsibility. If it is not satisfied with the Memorandum Agreement there is another course of action to follow. The course it has here taken is repugnant to good labor relations.

The Carrier has established that there has been no violation of the applicable agreement and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier submits that the claim is without foundation in the applicable agreement and understanding between the parties and should be denied.

All of the information herein has been discussed with or is known to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: In order to avoid a reduction in the salaries of certain monthly rated employees by the application of Rule 33(c), a part of the Forty-Hour Week Agreement, the parties entered into agreements to maintain the monthly rate and have them comprehend a stated member of overtime hours while the incumbents held such positions. The claimant was an incumbent of such a position and the essence of the claim is a contention that the overtime hours comprehended apply only to daily overtime.

The Agreement covering claimant's position provides in part:

"Incumbents worked overtime in any one month in excess of the overtime hours as shown in the above table will be paid for, in addition to the monthly rate, at time and one-half and included in the last payroll period for the month in which worked."

That clearly provides for a monthly accounting of overtime worked, credit of the overtime hours comprehended and payment for the excess overtime hours worked in the month.

Rule 20-3 is entitled "Overtime" and provides that overtime is (a) work in excess of eight hours per day, (b) work in excess of forty hours in any work week and (c) work on more than five days in a work week. Certainly that definition of overtime must be deemed to be what the parties intended to encompass when they used the term overtime in the Memorandum Agreement here involved. If they had intended otherwise they could and should have used appropriate language to limit its application. Thus we find the claim to be without merit.

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

The Agreement was not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 22nd day of January, 1953.