

Award No. 6531

Docket No. CL-6615

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

LeRoy A. Rader, Referee

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**PARTIES TO DISPUTE:**

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

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the parties' Agreement when

(a) On Sunday, May 30, Sunday, July 4, and Sunday, September 5, 1948, it suspended Joint Tallyman-Receiving Clerk Sanco Yarschuck from his regular assignment at Pier 22, North River, New York, N. Y., for the purpose of absorbing overtime; and

(b) That Claimant Yarschuck shall be compensated a day's pay at the time and one-half rate, at the daily rate of his position, for May 30, July 4 and September 5, 1948.

**EMPLOYEES' STATEMENT OF FACTS:** During the period of this claim, Claimant Sanco Yarschuck was regularly assigned to a position of Joint Tallyman-Receiving Clerk at Pier 22, North River, New York, N. Y. His position was regularly assigned to work from 3:30 P.M. to 12 midnight, 30-minute lunch period, from Sunday through Friday, with Saturday as his day of rest. The duties of the position were in connection with perishable traffic for the produce market, which operates early on weekday mornings, but not on Sundays and holidays. His regular assignment was made for the Carrier's convenience to cover necessary work preparatory to the opening of the produce market early each morning, and was not a position necessary to the continuous operation of the Carrier. The position was not relieved on Saturdays, as the market was not open on Sundays. Therefore, he was paid time and one-half for his regular assignment on Sunday under Rule 30.

Due to the fact that the produce market was not open on Decoration Day (Monday, May 31), Independence Day (Monday, July 5) and Labor Day (Monday, September 6), 1948, the Agent required Claimant Yarschuck to suspend work on the three Sundays in dispute during his regularly assigned hours, by instructing him not to report for duty on such days, but instead to work his regular hours on the preceding holidays. Therefore, his position was blanked on Sundays, May 30, July 4, and September 5, 1948.

Claim was filed and progressed in the proper manner, up to and including the highest official designated by the Carrier without settlement being made.

should not have been worked on the day representing the legal holiday in that week.

Does any rule in the agreement support the contention that when the work week is reduced under such circumstances, it must be reduced or blanked on any one particular day?

The Guarantee Rule in the 1947 Agreement is Rule 13(a). The rule permits blanking the job in a week in which holidays occur. Rule 13(a) reads:

**Sanco Yarschuck**

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

At this point the Carrier desires to discuss the historical background of Rule 13(a). It first appeared in the 1920 Agreement between the Director General of Railroads and the Clerks' Organization effective on this property. Rule 13(a) appears as Rule 66 (Article VIII) in that agreement reading:

"\* \* \* Nothing herein shall be construed to permit the reduction of days for the employes covered by this Rule (66) below six (6) per week excepting that this number may be reduced, in a week in which holidays occur, by the number of such holidays."

In the Clerks' Agreement of 1922 Rule 13(a) appeared identical in form and context to the 1947 contract. It appeared in the 1922 Agreement as Rule 64. Rule 13(a) or an identical counterpart has appeared in each succeeding Clerks' Agreement to the 1947 Contract.

According to the plain language of the rule the work week could be reduced without regard to whether or not the particular day blanked was the legal holiday. This meaning and interpretation is consonant with the literal expression of the rule. The rule simply says: "\* \* \* this number may be reduced, in a week in which holidays occur, by the number of such holidays." Had it been intended for the rule to mean what the Committee now contends it means, it is a fair deduction that this intent could have been expressed in very plain language. It was not so expressed. To attempt to apply any other meaning to the literal language of the rule as it now stands would be to do irreparable damage to that rule. This Division has no warrant so to do.

The Carrier asserts that the claim made here is consistent neither with established practices on this Railroad nor with the working rules.

**OPINION OF BOARD:** This claim comes to this Board on a joint submission and the essential and controlling facts are not in dispute.

Claimant's duties are in connection with perishable traffic for the produce market which operates early on week-day mornings but does not operate on Sundays and holidays. Therefore, in the six-day assignment the rest day is Saturday. In the year, 1948, Memorial Day and the 4th of July fell on Sundays and were observed on the following Mondays. Labor Day being on Monday was preceded by Sunday. As the produce market was not open on Sundays or holidays, Claimant worked on the Monday after Memorial Day which was the observed holiday, and on July 5, the observed holiday, also on Monday, and on Monday, Labor Day.

Claim is made for a day's pay at the time and one-half rate, at the daily rate of his position, for Sunday, May 30, Sunday, July 4 and September 5, 1948, as he was instructed not to report for duty on the three Sundays in question. It is contended that this was done for the purpose of

absorbing overtime. No question is involved relative to the rate paid on the three Mondays worked. In support of the claim is cited Rule 13, Guarantee, and Rule 11 (a) entitled Sunday and Holiday Work, as follows:

"Rule 13. Guarantee.

"(a) Nothing within this agreement shall be construed to permit the reduction of days for employees covered by this agreement below six days per week, except that this number may be reduced, in a week in which holidays occur, by the number of such holidays."

and

"Rule 11. 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, \* \* \*."

Also cited is Rule 4, Absorbing Overtime and the historical background of the rules in question.

We take note of the exception in Rule 13 (a) and the use of the words "work performed" in Rule 11 (a) and reach the conclusion that the claim should not be sustained. Also in denying the same the nature of Claimant's assignment, i.e., duties in connection with perishable traffic for the produce market which does not operate on Sundays and holidays, therefore, Saturday designated as the rest day.

**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 claim should be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.