

Award No. 6601

Docket No. CL-6325

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, amended September 1, 1949, particularly Paragraph IV-H of Supplemental Agreement "A", when extra employees were paid straight time rate for services performed on Sundays at Williamsport Transfer, Williamsport, Pa., Susquehanna Division.

(b) All extra employees affected be paid the difference between straight time allowed and time and one-half for all services performed on Sunday, February 12, 1950, and all subsequent Sundays until adjusted.

(c) Employees covered by this claim to be paid will be only those designated by the Brotherhood at time of settlement.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimants in this case are employees holding extra list positions established under an Extra List Agreement in accordance with Rule 5-C-1 of the Rules Agreement. The matter of establishing these positions, the number of positions, the manner in which the incumbents will be used, etc. is not in

Therefore, the Carrier submits that the claim for the punitive rates for the Sundays specified in the Employees' Statement of Claim should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that there is no prohibition in the Agreement against using the Claimants, extra or unassigned men, to perform work on Sunday at straight time rates of pay. Rule 4-A-1(i) specifically directs the Carrier to use extra employes for work on days which are not a part of any assignment and does not limit its application to days other than Sunday.

It is, therefore, respectfully submitted that the instant claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimants in this case are employes holding extra list positions established under an Extra List Agreement in accordance with Rule 5-C-1 of the Rules Agreement. The only issue involved in this case is the rate of pay they should receive for services rendered beginning Sunday, February 12, 1950, and all subsequent Sundays. The employes involved were paid at straight time, and it is their claim that they are entitled to time and one-half for all services performed on Sunday as per claim filed.

It appears that during the period covered by the above claims, Williamsport Freight Station was a six-day operation and the regular employes covered by the Clerical Agreement had designated rest days of Saturday and Sunday or Sunday and Monday. In January, 1950, the Carrier instituted a new program for the handling of L.C.L. shipments at this station. Under this plan the Carrier required work to be performed on Sunday. A minimum number of gangs for work on Sunday were used, and in setting up the gangs for work extra men who had not otherwise worked forty hours in their work week were used from the extra list established at this location.

It is the position of the employes that Sunday is a rest day at this station for all employes, extra as well as regular, and therefore work on Sunday must be paid for at the rate of time and one-half. It is the position of the Carrier that extra employes are only entitled to the pro rata rate for services performed on any day including Sundays and holidays.

The parties are in agreement that the operation at Williamsport is a 6-day operation and that Sunday is a day on which no one is assigned to work under the 40-Hour Week Agreement. It also appears that Sunday is a rest day for regularly assigned employees and such men who work on their day of rest are entitled to pay at the rate of time and one-half.

Prior to September 1, 1949, extra employees were covered by Rule 4-A-6(d) which provided:

"An extra employee notified or called to perform service will be paid at pro rata rate for actual time worked with a minimum of four hours, exclusive of meal period. Such employee required to perform a total of more than six hours' service will be allowed a minimum of eight hours pay at the pro rata rate."

Effective September 1, 1949, Rule 4-A-1(i) provides:

"Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

It is to be noted that the above rule places no restrictions upon the type of operation or the work involved, nor does it provide for the rate of pay for such work. It is also to be noted that Rule 4-A-6(d) and Rule 4-A-1(i) makes no mention of time and one-half for work done, and it should be noted that Rule 4-A-6(d) states that such services rendered shall be paid at pro rata rate. It is our opinion that under the agreed facts in this case employees on the extra list should be paid at pro rata.

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 claim will 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 4th day of May, 1954.