Award No. 7318
Docket No. CL-7465

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: (a) Carrier violated the current Clerks' Agreement on May 30, 1952, at Sweetwater, Texas, when it denied J. V. Baugh the right or opportunity to perform work on his position May 30, 1952; and,

(b) J. V. Baugh shall now be paid seven (7) hours at overtime rate, at rate of his regular position for May 30, 1952.

EMPLOYES' STATEMENT OF FACTS: As of the date the instant claim arose there existed at the Sweetwater, Texas, Freight Warehouse, along with other positions not here involved, several Class 3 positions, the incumbents of which are assigned to load, unload, truck, stow and handle all LCL freight received at or forwarded from that station, the senior of whom was J. V. Baugh, Stowman. These positions are assigned 8:00 A. M. to 5:00 P. M., 5 days per week, Monday through Friday, rest days Saturday and Sunday. As of the same date there existed at the Sweetwater Passenger Station a Class 3 position designated as Laborer No. 4, occupied by L. Healer, assigned 4:00 A. M. to 1:00 P. M., which position is a seven-day position, the regular incumbent being assigned five days per week, Wednesday through Sunday, rest days Monday and Tuesday, but being required to work on his rest days in the absence of relief.

Decoration Day, Friday, May 30, 1952, Carrier required all of the Class 3 employes assigned to work at the Sweetwater Freight Warehouse, including Mr. Baugh, to take the day off pursuant the provisions of Article XI, Section 6-b, of the applicable Agreement. On the same day, May 30, 1952, a legal holiday as defined in the Agreement, Carrier required Mr. Healer to vacate his own position at the Passenger Station and go to the Freight Warehouse in Sweetwater, some three miles distant, and work seven hours, from 8:00 A. M. to 3:00 P. M., which includes two hours overtime, loading, unloading, trucking and handling LCL freight, which work is assigned to and regularly performed by the Class 3 employes working in the Freight Warehouse and assigned at that location.

POSITION OF EMPLOYES: It is the position of the Employes that Carrier's action in requiring the occupant of a regular seven-day Laborer position assigned to handle mail and baggage at the Passenger Depot to

The Carrier fails to see any connection between the provision of this rule and the question involved in the instant dispute, as no employe was required to suspend work during regular hours to absorb overtime. The Class III work at Sweetwater was performed on Decoration Day, May 30, 1952, as part of the regular assignments of positions of Laborers No. 1 and No. 4. Since the work performed by L. Healer, Laborer No. 4, was work which was regularly performed by him on Saturdays and holidays and frequently on other days of the week, it is evident that he was not required to suspend work to absorb overtime. Instead of supporting the claim, this rule actually supports the position of the Carrier.

In his subsequent letter of August 10, 1954, in reply to Mr. Comer's letter of May 12, General Chairman Byrne made the statement that:

> "Mr. Gilbert's letter in no wise alters the position of the employes because, as you admit, Mr. Healer is primarily assigned to handle mail and baggage at the passenger station and any work he may be used to perform at the freight house is in the form of assistance to the 'regular' assigned freight house employes as authorized under the preservation of rates rule, Article XI, Section 3-a, and he cannot, therefore, possibly be the 'regular employe' within the intent or meaning of Article VII, Section 1-e."

While the Carrier is uninformed as to the reasons for Mr. Byrne's citation of Article XI, Section 3-a, the fact remains that Mr. Healer, Laborer No. 4, was not used under that rule, but, on the contrary, performed duties on the date in question which were a part of his regular assignment.

* * * * *

Without prejudice to its position, as previously set forth herein, the Carrier desires to call attention to the fact that the claim in behalf of Claimant J. V. Baugh is for "seven (7) hours at overtime rate", which the Carrier construes as meaning seven hours at time and one-half. It is a well established principle, consistently recognized and adhered to by the Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

* * * * *

In conclusion, the Carrier respectfully asserts that the Employes' claim in the instant dispute is entirely without support under the Agreement rules in effect between the parties hereto and should be denied in its entirety.

The Carrier is uninformed as to the arguments the Employes will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs submitted by the Organization in this dispute.

All that is contained herein is either known or available to the Employes and their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The claim in this case arises out of the same work assignments of class 3 employes at Sweetwater, Texas, as have been described in Award 7317. Claimant was regularly assigned at the freight station to a five-day position, 8:00 A. M. to 5:00 P. M. Laborer Position No. 4 was filled by L. Healer. It was a seven-day position, Healer being assigned to a work week of Wednesday through Sunday, with Monday and Tuesday as rest days. The assigned hours were 4:00 A. M. to 1:00 P. M. On May 30, 1952, the day here involved, Healer was working his rest days due to the absence of the regularly assigned relief employe.

On May 30, 1952, the Claimant was not used, it being a holiday and no part of Claimant's assignment under the controlling holiday rule. Carrier used Healer to do trucking work at the freight station from 8:00 A. M. to 3:00 P. M. Claimant contends that he should have been used to perform this holiday work under Article VII, Section 1-e, which provides:

> "Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by the senior qualified and available off-in-force-reduction employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The Organization also relies on that part of Decision 2 of the Forty Hour Week Committee, providing:

> "Where work is required to be performed on a holiday which is not a part of any assignment the regular employe shall be used."

The occupant of Laborer Position No. 4, and the regular relief man assigned to the rest-day work of his position, was assigned to perform trucking work at the freight station. We hold, therefore, that Healer had the same right to perform trucking work at the freight station on Saturdays and holidays as the occupant of Laborer Position No. 1 had in Award 7317. Under the holding in that Award, Healer was properly used at the freight station on May 30, 1952, during the period of his regular assignment.

We point out, however, that Healer's regular hourly assignment ended at 1:00 P. M. We have held, in accordance with Decision No. 2 of the Forty Hour Week Committee, that work on a holiday which is not a part of any assignment belongs to the regular employe. Award 7134. The work performed by Healer between the hours of 1:00 P. M. and 3:00 P. M. on May 30, 1952 was outside the hours of his regular assignment and within the regular daily assignment of the Claimant. It was holiday work which the Claimant had the right to perform. The claim is valid for the two hours work at the time and one-half rate. It was unassigned holiday work which belonged to the regular employe under the rule as interpreted by the Forty Hour Week Committee in its Decision No. 2.

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 Employe involved in this dispute are respectively carrier and employe 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 to the extent shown by the Opinion.

AWARD

Claim sustained for two hours at the time-and-one-half rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May, 1956.