Award No. 8281
Docket No. CL-7836

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the terms of the Clerical Agreement on Sunday, June 29, 1952, when it refused to compensate Parsons Extra Clerk Donald E. Angel at the rate of time and one-half for service performed on his rest day, and that the Carrier shall now be required to compensate Clerk Angel for the difference between what he was paid at the pro rata rate of his position and what he should have been paid at the punitive rate.

EMPLOYES' STATEMENT OF FACTS: At Parsons Yard, Ohio, there is in effect an agreement establishing, effective January 1, 1951, a bona fide extra list of Group 1 employes. (See Employes' Exhibit "A" attached.) Mr. Donald E. Angel, the claimant, was employed by the Chesapeake and Ohio Railway Company on June 10, 1952, and was assigned to a standing on this bona fide extra list to perform service for the Carrier in accordance with provisions of the extra list agreement. During the period involved in this claim Mr. Angel was so assigned. The issue involved is the rate of pay applicable to the service performed by Mr. Angel on Sunday, June 29, 1952. The Carrier has paid the straight time rate of pay for service performed by Ankel on that date. The Employes contend that Angel performed service on more than five days in the work week beginning Monday, June 23, 1952, and extending through Sunday, June 29, 1952. The Employes further contend that Angel was entitled to two rest days during the period Monday, June 23, and Sunday, June 29, 1952, and having been accorded but one rest day Tuesday, June 24—the agreement supports the claim for payment at the rate of time and one-half times the basic straight time rate for work started on the seventh calendar day of Angel's work week the last day of the work week that he could have been accorded his second rest day in the period.

During the work week involved Angel was called from the extra list to fill temporary vacancies in regular assignments as follows:

Date 1952	Day of Week	Position	Hours Worked	Wage Rate	How Paid
6-23	Monday	Yard Clerk	12:01A- 8:00A	$14.52	Straight time rate.
6-24	Tuesday	Did not work			
6-25	Wednesday	Record Clerk	8:00A- 4:00P	14.52	Straight time rate.
6-26	Thursday	Yard Clerk	4:00P-12:00P	14.52	Straight time rate.
6-27	Friday	Yard Clerk	12:01A- 8:00A	14.52	Time and one-half rate.
6-28	Saturday	Yard Clerk	12:01A- 8:00A	14.52	Straight time rate.
6-28	Saturday	Messenger	12:01A- 8:00A	13.15	Time and one-half rate.
6-29	Sunday	Messenger	12:01A- 8:00A	13.15	Straight time rate.

paid for in excess of eight straight time hours will not be used in computing the 40 hour work week for the extra clerk and also will not be used in computing the number of regularly assigned extra clerks to be assigned to the extra list for the succeeding payroll period."

Therefore, there is nothing in the extra list agreement which sets aside the general agreement provisions with regard to computing the 40-hour work week for extra employes.

The Carrier's payments in this case have been made fully in accordance with all of the agreement rules, and the claim should be denied in its entirety.

All data included in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced)

OPINION OF BOARD: It is the claim of the Organization that Extra Clerk Donald E. Angel had but one rest day (Tuesday) off in his work week starting Monday, June 23, 1952 and having worked six days of the seven, he should have been paid one and one half times the basic straight time for work on Sunday, June 29, 1952, the second rest day of his work week, instead of the straight time rate paid by Carrier.

Organization cites, in support of its claim, these portions of Rule 30:

"(a) The Carrier will establish * * * a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven * * *; so far as practicable the days off shall be Saturday and Sunday.

"(h) To the extent extra * * * men may be utilized under this agreement, their days off need not be consecutive * * *."

Organization also relies on this portion of Rule 31 (c):

"Employes worked on more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks * * * (exceptions which follow are not applicable here)."

Organization contends:

"Since the facts of record indicate that Angel was worked on six separate and distinct calendar days during his work week as an unassigned employe which began on Monday, June 23 and extended through Sunday, June 29, 1952, the sole dispute between the parties is whether Angel should have been allowed pay at the rate of time and one-half time for service performed from 12:01 A. M. to 8:00 A. M. on Sunday, June 29, 1952, or was he properly allowed pay for that service at the straight time rate of pay. The Employes contend that Angel should have been accorded one more rest day during the period involved in addition to Tuesday, June 24, 1952. That additional day—viewing the record—should have been Sunday, June 29, 1952."

Argument in behalf of Organization concedes, however, that Carrier "had the alternative of letting Claimant have Sunday as his second day off duty; or working Claimant as Carrier did, but paying him therefor at the punitive or premium rate * * *."

Carrier, however, points to the agreed fact that Claimant, having worked 4:00 P. M. to midnight, on Thursday of the week in question, and the shift immediately following from 12:01 A. M. to 8:00 A. M., Friday, was paid for the latter shift at time and one-half. Also, because Claimant worked a shift starting at 12:01 to 8:00 A. M., Saturday and also worked the 4:00

P. M. to midnight shift the same day, he was paid at the punitive rate for the latter shift, the premium shifts each having come within the 24 hour range beginning with the start of his previous assignments, respectively.

Section 5(c) of Memorandum of Agreement between the parties effective January 1, 1951 reads as follows:

> "When extra clerks are worked the second tour of duty within a twenty-four hour period, and/or worked beyond forty hours in any work week, for which service time and one-half is paid, time paid for in excess of eight straight time hours will not be used in computing the 40 hour work week for the extra clerk and also will not be used in computing the number of regularly assigned extra clerks to be assigned to the extra list for the succeeding payroll period." It is argued on behalf of Carrier that:
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> "* * * during his work week—Monday, June 23, through and inclusive of Sunday, June 29—Claimant worked five straight time days for which he was compensated at the straight time rate and 16 hours' overtime for which he was compensated at the rate of time and one-half.
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> "Rule 31 (d) expressly provides that 'There shall be no overtime on overtime' and 'neither shall overtime hours paid for * * * be utilized in computing the 40 hours per week. * * *' Accordingly the sixteen hours Claimant worked and was paid for as overtime during his work week cannot be used in computing the 40 hours per week. Further, Section 5 (c) in the Memorandum of Agreement expressly provides that,—
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> > '* * * time paid for in excess of eight straight time hours will not be used in computing the 40 hour work week for the extra clerk.'
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> "Inasmuch as the sixteen hours Claimant worked and was paid for as overtime cannot be used in computing the forty hours in his work week. Rule 31 (c) relied on by Petitioner is neither applicable nor was it violated. Claimant has been properly paid and is not entitled to the additional compensation claimed."

Carrier's argument, predicated on the clear language of the applicable Agreements, will be sustained and a denial Award will be made.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1958.