

Award No. 9375

Docket No. CL-8059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules and provisions of the Clerks' Agreement at:

1. (a) Atlanta, Georgia (Hurt Street Yard)

When on Monday, September 6, 1954 (Labor Day) it notified Clerk A. D. Cass, (hereinafter referred to as Claimant Cass) that his assignment would be blanked on that day and required and/or permitted the Chief Clerk at the Howells, Georgia yard office, located a distance of seven miles from the Hurt Street yard, to go to Hurt Street yard and bring the work assigned to and performed by Claimant to Howells yard office where it was performed by Clerks who were working their regular assignments on that day.

(b) That, as a penalty for the Agreement violation, Claimant Cass be paid eight hours at the punitive rate of his position for Monday (Labor Day) September 6, 1954.

2. (a) Hermitage (Richmond, Virginia) Storehouse

When on Thursday, November 25, 1954 (Thanksgiving) Saturday, December 25, 1954 (Christmas), Saturday January 1, 1955, (New Year's) Tuesday, February 22, 1955, (Washington's Birthday) Monday, July 4, 1955 and subsequent holidays the Storekeeper at Hermitage storehouse notified the Clerks under his jurisdiction that they would not be worked on these holidays and Diesel Clerks, Mechanical Department employes under the jurisdiction of the General Foreman and located in the Diesel shop, were required to go into the storehouse and perform the duties assigned to and performed daily by the Clerks in the storehouse and under the jurisdiction of the Storekeeper.

(b) That, as a penalty for the Agreement violation each of the following Clerks be paid eight (8) hours at the punitive rate of their respective positions for each of the following holidays:

H. M. Falconer — November 25, 1954 (Thanksgiving)
 December 25, 1954 (Christmas)
 February 22, 1955 (Washington's Birthday)

F. J. Waldbauer — November 25, 1954 (Thanksgiving)
 December 25, 1954 (Christmas)
 January 1, 1955 (New Year's)

H. V. Joyner — January 1, 1955 (New Year's)
 February 22, 1955 (Washington's Birthday)

3. (a) Hamlet, North Carolina, Storehouse

When, on Monday, May 30, 1955, (Memorial Day) the Storekeeper notified Counterman J. H. Clayton that he would not be used to protect his assignment in the storehouse on the holiday as the Diesel Clerk would protect same and the work assigned to and performed by Clayton was performed by the Diesel Clerk, an employe of the Mechanical Department and under the supervision of the General Foreman.

(b) That, as a penalty for the Agreement violation, Counterman J. H. Clayton be paid eight (8) hours at the punitive rate of his position for Monday, May 30, 1955.

EMPLOYEES' STATEMENT OF FACTS:

(1) Atlanta, Georgia (Hurt Street Yard)

Claimant Case occupies a position titled Rate and Bill Clerk at Hurt Street Yard, Atlanta, Georgia, which he bid in when it was advertised by the following bulletin:

SEABOARD AIR LINE RAILROAD COMPANY

OFFICE OF SUPERINTENDENT

GEORGIA DIVISION

ADVERTISEMENT C-22

Howells, Ga., May 29, 1953 If
 642-Clerk

ALL CONCERNED:

Bids will be received in this office up to and including 12:01 A. M., June 8 for:

Position	Location	Rate	Days		Hours	Lunch	Rest Days
			Per Wk.				
Train Clerk (TEMPO- RARY VACANCY)	Howells Yard Ga.	\$13.50*	5		3:30 PM-11:30 PM	20"	Tues. & Wed.

*Plus COL Adjustment.

Chairman's letter of April 30, 1951 in connection with the February 22, 1951 claim aforementioned proves this beyond a doubt and which, incidentally, is in conformity with the application of the rule since its adoption. Therefore, we emphatically assert that the agreement has not been violated and the claims must, accordingly, be denied. The burden is upon the petitioner to prove otherwise.

Carrier affirmatively states that all data used herein has been discussed with or is well known to the Organization representative.

OPINION OF BOARD: Under Rule 57(f) and Decision No. 2 of the forty hour Week Committee the work here involved should have been performed by claimants as the regular employes unless permissibly performed by the employes called to perform work on the holidays under the last paragraph of Rule 58 of the Agreement which provides that:

"An employe called to perform work on Sundays or holidays may be required to perform work that is regularly assigned in connection with other positions where same does not exceed one and one-half (1½) hours."

That, being a special rule relating to Sunday and holiday work only, would prevail over the general rule 57(f).

Petitioner contends that the above quoted provision of Rule 58 is an exception to and limitation of the preceding paragraph of that rule, which reads:

"Overtime Work Not in Extension of Regular Work. When overtime work is required outside of the regular assigned hours and it is not the same as the regular work performed during the regular assigned hours of a position, the qualified employes in an immediate office who normally perform the kind of work shall be used."

A careful reading of the last paragraph of Rule 58 is convincing that it is independent of the preceding paragraph and not restricted thereby.

Petitioner further asserts that the work involved in each instance exceeded one and one-half hours. It argues that the diesel clerks made various trips during the entire eight hours that they were on duty and for that reason the time they were used was not confined to one and one-half hours. But that is not the proper test. Rather it is whether "an employe" was required to perform work regularly assigned to claimants' positions exceeding one and one-half hours. Carrier denies such to be the case and petitioner has failed to overcome the denial.

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.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of April, 1960.