# Award No. 9548
# Docket No. CL-9225

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

William E. Grady, Referee

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**PARTIES TO DISPUTE:**

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY**
**(Pere Marquette District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement when it failed to compensate Donald Sharpe, Clerk, Saginaw, Michigan at the rate of time and one-half for services rendered on March 3 and 4, 1956, his sixth and seventh day, and

That Carrier shall now compensate Donald Sharpe the difference between pro rata rate he was paid and the rate of time and one-half he should have been paid for services performed on Saturday and Sunday, March 3 and 4, 1956.

EMPLOYES' STATEMENT OF FACTS: Donald Sharpe made application and was assigned to position of Yard Clerk, with a work week Monday through Friday, with rest days Saturday and Sunday. On February 29, 1956, Carrier notified Mr. Sharpe by bulletin notice that effective March 3, 1956 the work week assignment would be changed to Saturday through Wednesday, rest days Thursday and Friday.

The change in rest days resulted in claimant working over and above forty hours in the work week covering Monday, February 27, 1956 for which he was paid the straight time rate for his position for work performed on his sixth and seventh days. He worked seven consecutive days starting with Monday, February 27, 28, 29, March 1, 2, 3, and 4, 1956.

This claim was handled on the property in regular order of succession up to and including Mr. B. B. Bryant, Assistant Vice President—Labor Relations. Employes Exhibit A and B.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing an effective date of August 1, 1947, and amended

In view of the above carrier submits the claim here before your Board is not supported by the rules as interpreted by your Board and should be denied.

All data submitted herewith has been placed before the employes in handling the case on the property.

**OPINION OF BOARD:** This claim is for payment at the overtime rate for work performed on two days which would have been days of rest but for a change in Claimant's schedule of work. As a result of the change Claimant was required to work seven successive days commencing on Monday, February 27, 1956 and ending Sunday, March 4, 1956. The claim covers Saturday, March 3 and Sunday, March 4, the sixth and seventh days.

The problem presented is not new and again the arguments pro and con have been impressively marshalled. On balance we shall follow the teaching of our Award No. 9243 in which we said:

> "The controlling rules of the Agreement are in common form. Under like or equivalent rules the same issue has repeatedly been submitted to this Division and over vigorous dissent and earlier exception a succession of sustaining awards have resulted, participated in by able and experienced referees. Therefrom we have a well established rule of construction on this Division as to the application of the confusing rules involved to the situation here presented. See Awards 5586, 5807, 7319, 7320, 7324, 7719, 8078, 8103, 8144 and 8145.
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> "If this were a new issue we might well reach a different conclusion, but the intent and application of the rules is far from explicit and a conflicting award here could not clarify the issue but only result in confusion."

**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 there was a violation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of September, 1960.

## DISSENT TO AWARD NO. 9548, DOCKET NO. CL-9225

In this Award the Majority has heaped further confusion on a subject already fraught with confusion by running contrary even to the Awards the Majority cited with approval in **Award 9243** and again cites with approval in this Award.

We have dissented or specially concurred in Awards involving change in rest days as circumstances warranted, but if any ray of light could be shed on these Awards it was that if a change in rest days was made on the first of five consecutive days of work, which was held to be the beginning of the new work week, claims for payment at the overtime rate should be denied. Such was the fact situation in the instant case, and **Awards 7320** Carter) and **7719** (Cluster), which the Majority cited with approval in **Award 9243** and again in the subject Award, commanded a denial of the claim. Such a situation did not exist in **Award 9243** or the other Awards, save **Awards 7320 and 7719,** cited with approval by the Majority in **Award 9243** and again cited with approval in the subject Award, yet the Majority sustained this claim. Further, it was on the authority of **Award 7319** (Carter) that the claims for payment at the overtime rate in **Awards 7320 and 7719** were denied and such claims in subsequent Awards sustained. Now we not only have hopeless confusion on the subject matter, but the Majority has even run contrary to the very Awards it cites with approval.

For the reasons stated as well as those stated in our Dissents to **Awards 7319, 8077** and others, and Special Concurrences to **Awards 7320 and 7719,** this Award is erroneous and contrary to the Majority's own teachings.

/s/ C. P. Dugan

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen

## LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 9548, DOCKET NO. CL-9225.

A review of the Dockets and Awards involving the confronting subject will show that it is the Carrier and its Representatives on the Board that have heaped confusion upon confusion on a very simple matter.

First, they introduced the novel theory that a change of rest days required the incumbent to move from one assignment to another and, consequently, he was not entitled to the punitive rate for work performed on his sixth and seventh day. This contention was rejected by Awards 5113 (Wenke), 5464 (Elson), 5586 (Robertson), 5807, 7319 (Carter), 8078 (Bailer), 8145 (Elkouri).

After Carriers' pleas of "moving from one assignment to another" were rejected by the Division, they then contended that a "new work week" was created and inasmuch as the employe had not worked in excess of 40 hours or five days in the "old or new work week" the overtime rules were not applicable. This also confused the issue and several referees were impressed by this untenable contention. However, the provisions of the overtime provi-

sions are clear in that they are not restricted to "an old work week" or "a new work week, but to "any work week" and "a work week".

The Dissenter's argument is further based on the proposition that inasmuch as the Carrier has the right to unilaterally change rest days, it should be relieved of paying the punitive rate when an employe is forced to work on the sixth and seventh day of his work week. That it would be necessary for the Board to add another exception, i. e., "except when days of rest are changed", to the overtime provisions of the 40-Hour Week Agreement, does not concern them in the least. This Board has no such authority and the Dissenters are fully aware of this.

The majority have correctly pointed out that the issue here is not new and has been settled adversely to the Carriers over the vigorous dissents of Carrier Members. The question is no longer in doubt on this Board and further attempts of confusion by the Dissenters will avail them nothing.

/s/ J. B. Haines
J. B. Haines

Labor Member