

Award No. 9679

Docket No. CL-9090

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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, except as amended, particularly Article 5 of the National Vacation Agreement of December 17, 1941, as amended August 21, 1954, when it failed to pay M. T. Fuhrman, Ticket Clerk at Fort Wayne, Indiana, Passenger Station, former Fort Wayne Division, at the time and one-half rate of pay for working his assigned vacation period from August 24, to September 4, 1955.

b. The Claimant, M. T. Fuhrman, should be allowed the difference between the straight time rate which he was paid, and the time and one-half rate of pay which he should have been paid, for ten days in the period August 24, 1955 to September 4, 1955.
(Docket 31)

EMPLOYEE'S 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 Claimant 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, except as amended, 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.

Mr. M. T. Fuhrman, the Claimant in this case, is the incumbent of a position of Ticket Clerk, at Fort Wayne, Indiana, Passenger Station, former Fort

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Fuhrman was scheduled to take his vacation from August 24 through September 4, 1955, but his vacation was deferred by the Carrier and he was required to work said period. In this regard, Article 5 of the National Vacation Agreement of 1941 provides, in part:

"Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employe so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. * * *"

Claimant was not given at least ten days' notice as was required for deferment of vacation in the absence of emergency conditions under Article 5. Nor is there merit to the Carrier's contention that an emergency existed under the facts reflected by the Record herein. While the Record does indicate service requirements which would have made it proper for the Carrier to defer Claimant's vacation upon giving at least ten days' notice, the situation hardly involved "emergency conditions" within any reasonable application of that term. While all emergencies can reasonably be said to comprehend "essential service requirements" (to use a term used in the Morse Interpretation to Article 5), by no means do all "essential service requirements" rise to the height of "emergency conditions" so as to eliminate the necessity of giving at least ten days' notice under Article 5. Without assuming to say precisely what would constitute "emergency conditions", it suffices to say that under the facts of the present case no such conditions can reasonably be said to have existed. Claimant's vacation was not properly deferred.

The claim for compensation at the rate of time and one-half instead of straight time for the work actually performed by Claimant during the period in question is supported by the last paragraph of Award 6658.

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 claim has merit.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 7th day of December, 1960.