Award No. 10785
Docket No. CL-9944

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Chicago and Western Indiana Railroad Company did not properly compensate redcap, George Phillips for overtime performed on May 17, 18, 19 and 20, 1957.

We request that Chicago and Western Indiana Railroad Company now pay redcap, George Phillips the difference between what he should have been paid under Rule 15(g) and what he actually received ($172.33) for the last pay period of May, 1957.

Further, that Mr. Phillips' earnings be reviewed from September 1, 1949 up until May 15, 1957, and that all overtime that he has made under the conditions of Rule 15(g) be correctly compensated for.

EMPLOYES' STATEMENT OF FACT: There is in existence an agreement between the Chicago and Western Indiana Railroad Company and the United Transport Service Employes, covering Hours of Service and Working Conditions bearing an effective date of September 1, 1949.

Rule 15 of the above mentioned agreement governs the work week including overtime. Rule 15(a), (b) and (g) are quoted here for ready reference:

"**Rule 15 — WORK WEEK:**

(a) Effective September 1, 1949, there is established for Red Caps a work week of 40 hours consisting of five days of eight (8) hours each, with two (2) days off in each seven, which shall be consecutive insofar as practicable. The work week may be staggered in accordance with the carrier's operational requirements. So far as practicable, the days off shall be Saturday and Sunday. Rest or off duty days may by agreement be accumulated so as to permit longer consecutive rest periods. (The foregoing work week rule is subject to the provisions of this rule which follows.)

"(b) — **BEGINNING OF THE WORK WEEK:**

The term "work week" for regularly assigned employes shall mean a week beginning on the first day on which the assignment is

At this conference Employes' representative stated that because of the provisions of Rule 15 (i) which reads:

> **"Hours worked in excess of eight on any one day shall not be utilized in computing the 40 hours per week.** Time paid for in the nature of arbitraries or special allowances such as bonus, attending court, deadheading, travel time, etc., shall not be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours." (Emphasis ours.)

A Red Cap could be worked, under the existing rule, as much as 120 hours in his assigned five work days without receiving payment at the overtime rate of time and one-half.

It is evident, therefore, that the employes recognized the manner and method of compensating Red Caps, which has been in effect since September 1, 1949, as proper and as was agreed to in the negotiations leading to the agreement made effective on that date. (September 1, 1949)

In the handling of this particular dispute on the property, the employes contended that in consideration of the merits of this claim all rules of the agreement are to be ignored, except Rule 15 (g), which reads as follows:

> "Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half time's the basic straight time rate, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list."

The carrier maintains that all pertinent rules of the agreement must be considered and that in this particular case, the provisions of Rule 15 (g) and 15 (i) must be considered in computing the 40 hours per week.

The progression of the claim involved in this dispute is nothing other than an attempt to revise rules which have been in effect and accepted for more than eight years, which your honorable board has no authority to do.

With respect to that part of the employes' claim reading:

> "Further, that Mr. Phillips' earnings be reviewed from September 1, 1949 up until May 15, 1957, and that all overtime that he has made under the conditions of Rule 15 (g) be correctly compensated for."

The carrier asserts that that request is improper under the provisions of Rule 13 (b) of the current agreement, which reads:

> "Claims arising under this agreement shall not be subject to monetary recovery unless presented within thirty (30) days of the date of events or circumstances giving rise to the claim."

All matters referred to herein have been made known to the employes either orally or by correspondence.

OPINION OF BOARD: At the time of this dispute George Phillips held a regular position of Red Cap and was regularly assigned to a work week of Friday through Tuesday with Wednesday and Thursday as rest days.

On Friday, Saturday, Sunday and Monday, May 17, 18, 19, and 20, 1957, he was required to work in excess of his eight hour daily assignment, to wit, May 17 — Friday 2:45 hours, May 18, Saturday 2:45 hours, May 19, Sunday 3:15 hours and May 20 — Monday 2:45 hours. The Claimant was paid at the pro rata or straight time rate for the time worked in excess of eight hours on each of the four stated dates.

Claimant contends that he should have been paid at the time and one-half rate for the stated overtime in accordance with Rule 15(g) of the Agreement. Carrier states that he was properly paid under Rule 15(f) of the Agreement.

The Pertinent Sections of the contract are as follows:

"(f) — **OVERTIME:**

Work in excess of eight (8) hours on any one day shall be paid for at the straight time rate.

(g) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half time's the basic straight time rate, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list.

(h) Employes worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth or seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list. This Paragraph (h) does not apply to employes performing service outlined in Paragraphs (c), (d), and (e), of Rule 14.

(i) Hours worked in excess of eight (8) on any one day shall not be utilized in computing the 40 hours per week. Time paid for in the nature of arbitraries or special allowances such as bonus, attending court, deadheading, travel time, etc., shall not be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours.

(j) Nothing in this rule (No. 15) shall be construed to create a guarantee of any number of hours or days of work where none existed as of August 31, 1949."

We are here confronted with what the contract provides as set out above. This Division in Award #6856 (Referee Carter) said, we quote:

"* * * It is presumed that all of the contentions and arguments of the parties are merged in the written agreement. A party is not permitted to go behind his written agreement and offer special knowledge on the intent of plain provisions. It is conclusively presumed that all such matters were considered and incorporated in or left out of the agreement to the extent that the written contract shows. The integrity of written agreements requires that they be so construed. The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given

to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible."

In First Division Award 16072, (Referee O'Malley) that Division said, we quote:

"In considering the meaning and application of a contract, it is necessary to examine such instrument in its entirety. One clause, sentence, or paragraph may be interpreted one way if its intent and meaning is considered in the absence of all other parts thereof, while if considered in connection with all other parts, a limitation may be found or the true intent of the contract as a whole may be the opposite of that reached when consideration was given to the isolated clause, sentence, or paragraph."

Thus, this Board has said to ascertain the meaning of the contract, we must examine the entire instrument.

The Employes rely upon Rule 15, Section (g), which grants overtime pay for work in excess of 40 straight time hours per week, but this section must be read in connection with Section (f) which provides that the straight time rate will be paid on any one day for work in excess of eight (8) hours.

It was clearly the intent of the parties, that Section (f) applies to those covered by Section (g), and this Claimant was paid in that manner. Section (i) is concerned with how the 40 hours are to be determined, and it excludes time over 8 hours in this computation, which provision is consistent with Section (f) since such time is there defined as straight time. Section (h) allows overtime for work beyond 5 days on the 6th and 7th days.

Reading the entire part of the contract set out above we come to the conclusion that Claimant was properly paid, and his claim must be denied.

The record shows that since 1949 all red caps were compensated in the same manner, and that in 1955 the Petitioner sought in the manner provided for in the Railway Labor Act, to amend Rule 15(f), to provide for the payment of time and one-half for work performed in excess of eight hours on any day.

Negotiations were duly conducted, but no change was made in the rule. Adoption of the proposed rule would have obviated the claim here, but the Petitioner cannot by indirection under the guise of a claim accomplish that which could be accomplished directly.

In Award #5079; this Division said, we quote:

"To permit a practice, later urged as objectionable, to continue unchanged through the process of negotiating and settling terms of new agreements is some evidence of mutuality in the continuity of the practice. See Awards 4791, 2436, 3603."

* * * * * * *

"That the Organization was cognizant of the implications of Rule 58 is evidenced by the fact that in negotiations leading up to

adoption of the current Agreement, effective October 16, 1947, the Organization undertook to amend the Scope Rule."

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.