

Award No. 10848

Docket No. CL-10559

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated the Rules of Clerical Agreement No. 8 when it failed to use Mr. L. R. Estep, A.A.R. Clerk A-29, to perform the duties assigned his position on January 1, 1958, holiday, and

(b) That Mr. L. R. Estep now be paid eight hours punitive time rate of \$17.98 per day in addition to his other earnings for the above date.

EMPLOYEES' STATEMENT OF FACTS:

1. Claimant L. R. Estep is assigned to position of A.A.R. Clerk No. A-29, hours 8:00 A. M. to 4:30 P. M., one-half hour meal period, rest days Saturday and Sunday. Claimant's position is rated at \$17.98 per day.

2. The nature of Claimant's duties is such that he has customarily been required to work on holidays. On January 1, 1958, New Year's Day, however, Claimant was not notified to work. Miss Lorna Wiseman, A.A.R. Clerk-Steno, Position A-20, was required to perform at least 1 hour and 45 minutes of work regularly assigned to and performed by Claimant Estep. The work consisted of checking 86 cars on the repair tracks and writing 26 Billing Repair Cards.

3. The first cut of shop cars was "humped" at 11:55 A. M. which necessitated a check around 9:00 A. M. The second cut was placed at 12:40 P. M. which necessitated a check at about 1:00 P. M. A third cut of cars was placed shortly after 2:30 P. M. and was checked around 3:00 P. M. Therefore, the checking of cars was necessary to be performed over a spread of about six hours.

4. Claim was filed on January 2, 1958, and being declined, was appealed up to Carrier's highest Officer designated to receive and consider such appeals.

In this connection, examination of the details of the work performed by Wiseman as shown in **Carrier's Statement of Facts** will show that the 5 hours 25 minutes work consisted almost entirely of making reports due as of the first of the month. It has not been disputed in the handling on the property that Wiseman would have done this work on the first day of the month had the first day of the month fallen on one of her assigned work days. That the Wiseman work was the majority is conclusive.

CONCLUSIONS

The Carrier has shown that the performance of the work in question was assigned to Wiseman in accordance with the provisions of Rule 35 (b).

The Carrier has similarly shown that the work being on an unassigned day, the provisions of Rule 35 (a) are not applicable in a manner which operates to exclude the provisions of Rule 35 (b).

The claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employee Representatives.

OPINION OF BOARD: Claimant was regularly assigned A.A.R. Clerk, Monday through Friday, and Miss Lorna Wiseman was regularly assigned A.A.R. Clerk-Stenographer, Sunday through Thursday. On Wednesday, January 1, 1958, a designated holiday, Carrier called Wiseman and she worked 5 hours and 25 minutes on duties assigned to and performed by her on other days and 1 hour and 45 minutes on duties assigned to Claimant on his assigned days. Claimant was notified not to work.

Employee maintained Claimant should have been used to perform the work attaching to his regular assigned position, pursuant to Rule 35(a) of the Agreement between the parties effective November 1, 1955, especially in view of "Memorandum of Understanding Effective February 10, 1955." Carrier maintained it properly used Wiseman to perform the work, pursuant to Rule 35 (b), particularly the second sentence thereof, as work on an "unassigned day."

Rule 35 was as follows:

"Rule 35 — WORKING OVERTIME

"(a) Except where it is otherwise agreed between the proper officer and Division Chairman or Local Chairman authorized to act in his stead, in working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on holidays; the same principle shall apply in working extra time on unassigned days except as provided in Section (b) of this rule.

"(b) **Work on Unassigned Days.** Where work is required by the Carrier to be performed on a day which is not part of any assignment, it may be performed by an available 'cut off' (furloughed) employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee. In working regular employees hereunder, it is understood that where a small amount of work is required on each of two or more positions and only one employee is required, the employee regularly assigned to the majority of the work to be performed will be used."

The relevant portions of "Memorandum of Understanding Effective February 10, 1955" were as follows:

"It is agreed that in calling employes to work in the Mechanical Department on holidays at Roundhouse, Russell, Ky., and Repair Track at New Hump Building, the following will be used:

- "1. By the regular or relief employe who is regularly assigned to the position to be worked on the holiday and who ordinarily would have worked had it not been a holiday."

Rule 35(a), as supported by Item 1 of the Memorandum of Understanding, expressly applies the preference for the regular assigned employe separately to working extra time on holidays and working extra time on "unassigned days". This effects a distinction between holidays and unassigned days (at least those treated in Rule 35(b)) which precludes the second sentence of Section (b) from applying to holiday situations. Awards such as Awards 8198 and 7137, which announced that holidays are unassigned days, rest upon rules stemming from Article II, Section 3(i) of the Agreement of March 19, 1949, which was incorporated here as the first sentence of Rule 35(b). They did not disclose further rules such as Rule 35(a), which pre-dated the Agreement of March 19, 1949, or the subsequent Memorandum of Understanding.

Furthermore, it was not shown that the facts as disclosed by the record provided an appropriate occasion for reliance upon the second sentence of Rule 35(b), since it was not demonstrated that the 5 hours and 25 minutes of Wiseman's regular work was a "small amount of work" as contemplated by the requirement of the rule for each position in question.

The claim should be sustained, but for 5 hours and 20 minutes at the rate of time and one-half, conformably with Rule 34(c), since Claimant's work involved here required less than 4 hours. Award 9375.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Company violated the Agreement and claim should be sustained for 5 hours and 20 minutes, at the rate of time and one-half.

AWARD

Claim sustained as set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1962.