Award No. 12693
Docket No. CL-12550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4948) that:

1. The Carrier violated the Clerks' Agreement when it refused to allow Nathalee Hogue the guarantee of twelve (12) work days for the month of September 1960.

2. That Nathalee Hogue be allowed one day's pay at Utility rate of $20.35 to complete the twelve (12) day guarantee for the month of September 1960.

EMPLOYES' STATEMENT OF FACTS: Nathalee Hogue was regularly assigned to Extra Clerk No. 1, Rusk Avenue, Houston, Texas, for the full month of September 1960.

On September 30, 1960, Nathalee Hogue was called at 6:00 A. M. to work extra assisting in deliverying pay checks and continued from 10:00 A. M. same date until 4:00 P. M. as Crew Dispatcher No. 471. At 4:00 P. M. Nathalee Hogue doubled on Utility Clerk position No. 475 until 12:00 midnight. Hogue was on duty from 6:00 A. M. until 12:00 midnight, working four (4) hours extra Utility Clerk, six (6) hours as Crew Dispatcher No. 471, and eight (8) hours as Utility Clerk No. 475, a total of eighteen (18) consecutive hours within a twenty-four (24) hour period.

A Memorandum of Agreement which became effective February 1, 1958, (Employes' Exhibit "A") reads in part—

> "2. There shall be a guarantee of twelve (12) work days per month to the employe assigned to the extra board list for Rusk Avenue Yard Office."

Up to and including September 29, Hogue had worked only eight (8) days in the month of September. On the last day of the month, Hogue per-

Had she been required to remain on duty **on Job 471** eight hours past quitting time, continuing to perform the duties of that assignment, undoubtedly she would have submitted one time slip, showing thereon just one job number (471) and claiming eight hours straight time and ten hours overtime.

But the manner in which she submitted her time slips shows that she well realized that at four o'clock she finished her work as a replacement for W. R. Geary on Job 471 and started a new day's work as a replacement for W. L. Fitzgerald on Job 475.

The guarantee does not call for twelve calendar days' work—under the terms of the February 1, 1958 agreement the guarantee could conceivably (but not reasonably) be made in four calendar days by some marathon worker!

This "guarantee" obviously had for its sole purpose the provision of a floor for the earnings of the employes assigned.

(Exhibits not reproduced.

OPINION OF BOARD: The Claimant during the month of 1960, was assigned to the Carrier's extra board list. She was guaranteed "twelve work days" during the month under the following provision in the Memorandum Agreement effective February 1, 1958.

> "There shall be a guarantee of twelve (12) work days per month to the employe assigned to the extra board list for Rusk Avenue Yard Office."

This employe had worked eight days through the first twenty-nine days of the month, and on September 30 was instructed to report, and did report, at 6:00 A. M. September 30 to work as a supplementary Utility Clerk, but when the regularly assigned 8:00 A. M. to 4:00 P. M. Crew Dispatcher was unable to work, Claimant was assigned to his vacancy. For this service, she was paid eight hours straight time and two hours penalty time. The second shift Utility Clerk with assigned hours 4:00 P. M. to 12:00 P. M. was unable to work on the day in question, September 30, so Claimant also filled this vacancy. For this service, she was compensated eight additional hours at the punitive rate. The Claimant's contention is that this service, aggregating 18 hours, counted as only one workday, thus entitling her at the end of the month to three days to meet her guarantee. On the other hand, the Carrier maintains that the service performed constituted 2 workdays; Petitioner therefor worked 10 days and was entitled to 2 additional day's pay to comply with the above cited Memorandum. It is the difference of one day's pay which is the issue.

Rule 37(a) of the Agreement provides that:

> ". . . (8) consecutive hours or less, exclusive of the meal period, shall constitute a day's work for which eight (8) hours' pay will be allowed."

Rule 37 (d-1) provides that:

> ". . . Time in excess of eight (8) hours, exclusive of the meal period, on any day will be considered overtime and paid on the minute basis at the rate of time and one-half."

Carrier attempts to make a distinction between the connotation of "a day's work" as contained in Article 37(a) of the agreement and "work day"

as contained in the Memorandum of Agreement, February 1, 1958. It maintains that the letter refers to shifts and not days. We find this contention wholly without merit. The Carrier has implicitly recognized, by paying Claimant 8 hours at the straight time rate and 10 hours overtime, that the terms "work day" and "a day's work," are synonymous.

The language used in the above rules is clear, concise, unambiguous and has been subjected to interpretation in many awards emanating from this Board. Eight consecutive hours, exclusive of the meal period, constitutes a day's work. Time in excess of 8 hours on any day is considered overtime. The Claimant was paid 8 hours straight time and 10 hours punitive time. The connotation of the workday has been held to be a "24-hour period from previous starting time." (See Awards 687, 2053, 5796, and 5414).

We are of the opinion that only 1 workday can be accomplished in a 24-hour period. The workday has been used consistently in the industry to mean a 24-hour period from the previous starting time. The Memorandum of Agreement covering the Claimant guarantees 12 workdays per month. It is our judgment that the Claimant worked 9 days, and since Carrier paid her only for 11 days, we must sustain the claim.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12693, DOCKET CL-12550

(Referee McGovern)

The statement by the majority that "Carrier attempts to make a distinction between the connotation of 'a day's work' as contained in Article 37(a) of the agreement and 'work day' as contained in the Memorandum of Agreement, February 1, 1958" is not supported by the record. To the contrary, carrier's defense was based on Rule 37(a) and the argument that eight hours constituted a workday. This is verified on page 22 of the record where carrier states:

"It is Carrier's position that Claimant's service from 6 A. M. until 4 P. M. counted as one, and her service from 4 P. M. until midnight, still another. **Rule 37(a) clearly so indicates.**"

and again on record page 36:

" * * * It seems clear to Carrier that under Item 2 of this Agreement (Employes' Exhibit A) and the general agreement's Rule 37(a) quoted on page 3 of Employes' submission, the Claimant had two days' work (plus two hours overtime) September 30."

That portion of the majority opinion reading:

" * * * The Carrier has implicitly recognized by paying Claimant 8 hours at the straight time rate and 10 hours overtime that the terms 'work day' and 'a day's work,' are synonymous."

" * * * Eight consecutive hours, exclusive of the meal period, constitutes a day's work. * * * "

properly reflects carrier's argument, and dictates a denial of this claim.

Claimant performed eight hours' work on position No. 475 which was, as the employes put it "after completing her day's work on crew dispatcher position No. 471." (R., p.8) If the regular incumbents had worked positions Nos. 471 and 475 each would have been credited with a day's work because under Rule 37(a), eight hours constitutes a day's work. There is no valid reason for holding that these two days which unquestionably constituted two work days for the regular incumbents were otherwise, only because both work days were filled by the same employe.

There is no dispute in this case regarding the rate of pay. Payment of overtime rate for working the second position is in accordance with the awards cited on page 2; however, not a single one of those awards included a dispute requiring an interpretation of a rule similar to the guarantee rule before us, nor a question regarding **work days** and do not hold nor stand for the proposition that a work day is a 24-hour period. Without exception, those cases involved claims for the overtime rate of pay which required a determination of when the **"day,"** not **work day,** started for the sole purpose of application of the overtime rate if work was performed for more than eight hours within a 24-hour period.

The carrier and organization negotiated the guarantee rule with Rule 37(a) before them. The majority finds, as argued by carrier, that "the terms 'work day' and 'a day's work' are synonymous." Such finding makes a denial award mandatory.

For these and other reasons we dissent.

W. M. Roberts

G. L. Naylor

R. E. Black

W. F. Euker

R. A. De Rossett

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 12693—DOCKET CL-12550

The Dissentors' merely rehash the same arguments made before the Referee; and, in their dissent, they fail, as they did in all their arguments, to compare "**work** days" with "**rest** days, the antonym.

The guarantee in the Agreement was for a minimum of twelve (12) work days per month. It was not, and was never intended to be a guarantee of twelve (12) shifts or ninety six (96) hours. Certainly other rules govern what a "day's work" is and enter into the computation of overtime which is payable for any work in excess of 8 hours on any **day**. Having worked only eight days in a thirty-day month, with only one day remaining the Claimant could not possibly have worked more than one day. The fact that Claimant worked eighteen hours on the last day of the month could not, and should not, have operated to deprive her of the three (3) additional days pay to which she was entitled under the guarantee.

Award 12693 is entirely correct and the Dissent does nothing to detract from its soundness.

D. E. Watkins, Labor Member

8-12-64