# Award No. 13188
# Docket No. CL-13277

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**Lee R. West, Referee**

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## PARTIES TO DISPUTE:

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

## CENTRAL OF GEORGIA RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5125) that:

(a) The Carrier violated and has continued to violate the Rules of the Miscellaneous Employes' Agreement of June 30, 1960, when it refused and continues to refuse to properly compensate regularly assigned Freight Handler I. E. Ransom, Dothan, Alabama Freight Agency, for work performed on his two (2) regularly assigned work days of Saturday and Sunday of each week, and that, therefore,

(b) Regularly assigned Freight Handler I. E. Ransom shall now be paid the difference between what he has been paid and what he should have been paid, i.e., the difference between one or two hours per day and eight (8) hours per day for each Saturday and Sunday, retroactive to May 30, 1961, and continuing thereafter until this violation is corrected, and

(c) Regularly assigned Freight Handler I. E. Ransom's name shall now be restored to the Seniority Roster of Miscellaneous Employes on the Macon Division, with seniority of September 20, 1957.

**EMPLOYES' STATEMENT OF FACTS:** I. E. Ransom, Freight Handler, Dothan, Alabama Agency, on the Macon Division, with proper seniority date of September 20, 1957, was at the time this claim arose, regularly assigned to work at said Agency on Saturdays and Sundays (another Freight Handler is regularly assigned to work eight (8) hours per day Mondays through Fridays and is not herein involved) and has held this assignment virtually since his entry into the service on or about September 20, 1957. His duties are to carry mail to and from the Atlanta & St. Andrews Bay Line Railroad and the Central of Georgia, clean the Central of Georgia Freight Agency Depot and clean cars which are used for loading paper mill products. Also, when the Regularly Assigned Full Time Freight Handler with assigned days of Monday

And there are numerous other awards of your Board on this point.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny this baseless claim in its entirety.

**OPINION OF BOARD:** Claimant, I. E. Ransom, ordinarily works one or two hours on Saturday and/or Sunday for Carrier at Dothan, Alabama. Primarily his duties consist of cleaning out cars. At times he has relieved the Regularly Assigned Freight Handler when the latter is absent or on vacation. Claimant was paid according to an Agreement or understanding between the Division Superintendent and the General Chairman which provided for payment of the Claimant under Rule 6, the Call Rule. However, after May 30, 1961, Carrier refused to pay according to the provisions of Rule 6. Claimant thereupon files claim for pay according to the provisions of Rule 4, which would require Carrier to pay him for 8 hours each day he worked after May 30, 1961. He also asks that he be restored to the Seniority Roster.

Claimant relies upon Rules 3, 4 (a) and 10, which read as follows:

"RULE 3. SENIORITY AND SENIORITY DISTRICTS

(a) Seniority of employes covered by these rules will begin from the date employe's pay starts as a regular employe, but shall not serve to disturb the standing of any employe as of the effective date of this agreement.

(b) Service of less than three (3) months in continuous employment will be considered as temporary employment and employes in such temporary employment will earn no seniority rights or standing by reason of such temporary employment. However, if the duration of continuous employment exceeds three (3) months, such employes' seniority standing will date from date of original employment."

* * * * *

"RULE 4. DAY'S WORK AND WORK WEEK

(a) Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

"RULE 10. REPORTING AND NOT USED HOURLY RATED EMPLOYES

Regularly assigned employes required to report for work will be paid a minimum of three (3) hours at the pro rata rate when conditions prevent work being performed. If held in excess of three (3) hours, actual time so held will be paid for at the hourly rate on a minute basis. If required to perform work during the time held, and, through no fault of their own, are released before a full day's work is performed, they shall be paid not less than eight (8) hours, except

Unassigned extra or floating gangs of employes will be paid at the hourly rate on a minute basis for all time worked, with a guarantee of 3 hours for 3 hours work or less, at pro rata hourly rate, and if held on duty in excess of 3 hours, shall be paid for actual time worked at pro rata rate up to and including the 8th hour, and for time worked after 8th hour at rate of time and one-half."

It is his position that he has been in continuous employment of Carrier for a period in excess of three months and therefore is not a temporary employe. He contends that his seniority dates from September 20, 1957, and cites Seniority Rosters to support such contention.

Claimant also contends that he is a "regularly assigned" employe and is entitled to be paid according to Rule 4 (a) or for a full 8 hour day each day that he works.

Carrier denies that Claimant is a regular employe and argues that he has no seniority. It contends that he is not entitled to any protection from the Agreement and is not entitled to pay according to any of the provisions thereof.

We believe that the record supports Claimant's contention that he is a Carrier employe. We believe that he has been in the continuous employment of Carrier for a period in excess of three (3) months and is therefore not a temporary employe. However, we are of the opinion that Claimant is not a "regular assigned employe", as contemplated by the first paragraph of Rule 10. We find, instead, that he is an "unassigned extra" employe as contemplated by the second paragraph of Rule 10, as quoted above. As such he was entitled to be paid at the hourly rate on a minute basis for all time worked, with a guarantee of 3 hours for 3 hours work or less, at the pro rata hourly rate.

We therefore hold that Claimant should be paid the difference between what he has been paid and what he should have been paid as an unassigned extra employe under the provision of the second paragraph in Rule 10 above quoted.

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 has been violated.

AWARD

Parts (a) and (c) sustained, part (b) sustained insofar as the difference between payment received and the amount Claimant should have been paid under the provisions of the second paragraph of Rule 10.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December, 1964.

## LABOR MEMBER'S DISSENT TO AWARD 13188, DOCKET CL-13277

Award 13188, Docket CL-13277 is in serious error in finding that Claimant was an "unassigned extra" employe "as contemplated by the second paragraph of Rule 10" and that the second paragraph of Rule 10 applies to a single employe working at an on line station far removed from the Savannah Waterfront where the exception in Rule 10 as to "Unassigned extra or floating gangs of employes" comes into play.

Claimant was employed and paid under an agreement which, although verbal, was clearly confirmed by the Carrier. Under that "Agreement" he was to report each Saturday and Sunday at a regular starting time and perform certain service for the Carrier for which he was to receive pay under the "Call" rule, i.e., three hours pay for two hours or less of work. Carrier reneged on this "Agreement" and started paying only for time worked, i.e., one or two hours, at pro rata rate. The "Agreement" was cancelled. Without the General Chairman's "Agreement" and concurrence to apply the "Call" rule and work Claimant less than the regular eight (8) hour day, then the entire Rules Agreement came into play. The "Call" rule did not apply and, inasmuch as Claimant had a definite starting time and was regularly assigned to report for and perform service each Saturday and Sunday, he was thus a "regular assigned employe", within the meaning and intent of Rules 4(a) and 10, who was required to report for and perform work but released before completing eight (8) hours service.

Rule 4 is titled "DAY'S WORK" and clearly contemplates eight (8) hours pay while Rule 10 is titled "REPORTING AND NOT USED". Clearly, in the record of this case, there was never a time or date shown when Claimant reported and was not used. Rather, he reported and was used each and every Saturday and Sunday as it was his regular assignment to do so. Therefore, in accordance with the many precedent Awards, commencing with Award 2589 and before and running to recent Award 13155, his claim under the circumstances here should have been allowed as presented instead of the Referee trying to carve out another exception which is clearly inapplicable.

The Award, in error on the payment, will tend to create more disputes then the one it should have settled. Exceptions in assignments and payments where needed were negotiated between the parties and are clearly spelled out in the Agreement. The exception found by the Referee is clearly inapplicable, entirely erroneous, and beyond his power to grant.

For all the above and other reasons set out in the record, I dissent to this erroneous Award on the payment under the second paragraph of Rule 10.

D. E. Watkins
Labor Member
1-12-65