

Award No. 14489
Docket No. CL-15254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5651) that:

(a) Carrier violated the provisions of the Agreement extant between the parties when it refused to properly compensate Mr. F. H. Oldham, Cashier at Elko, Nevada, for service performed on February 22, 1964.

(b) Carrier shall now be required to compensate Mr. F. H. Oldham for 8 hours at the rate of time and one-half for service performed on Washington's Birthday in addition to the 8 hours overtime received for working his rest day of February 22, 1964.

EMPLOYEES' STATEMENT OF FACTS: Mr. F. H. Oldham is the regular occupant of the seven-day position of Cashier at Carrier's Elko Freight Station with a work week of Monday through Friday and rest days of Saturday and Sunday. Relief on Saturday and Sunday is normally performed by the occupant of position of Relief Clerk No. 1.

Due to the absence of Relief Clerk No. 1 on Saturday, February 22, 1964, Mr. Oldham was required to work his Saturday rest day which was also a holiday. Mr. Oldham worked as required and submitted Carrier's form # 139 Rev. "Statement of Overtime Claim" on April 14, 1964, reading:

"This is a claim for eight (8) hours at time & one half rate account working holiday (Washington's Birthday). This is in addition to the eight (8) hours at time & one half rate paid for working my rest day. This is claimed under the rest day rule and the holiday rule per Board Awards: 10679, 10541, 10892, 11454 and 11899."

This claim was denied by the Timekeeper through his letter of May 5, 1964. (Employees' Exhibit "A").

specified holidays shall be allowed a minimum of 3 hours' pay for 2 hours' work or less and if held on duty in excess of 2 hours, time and one-half shall be allowed on the minute basis.

Employees who, prior to the completion of their regular tour of duty, are notified to return for further service may be compensated as if on continuous duty.

Employees who have completed their regular tour of duty and have been released, called to return for further service, shall be paid in accordance with the first paragraph of this rule."

SUNDAY WORK — HOLIDAY WORK

"Rule 22.

(a) — Sunday Work —

Previous provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such punitive rates does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

(b) — Holiday Work —

Work performed on the following legal holidays — namely; New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half. When such holiday falls on the second assigned rest day, other than Sunday, of an employee's work week, the day following will be considered his holiday".

OPINION OF BOARD: Claimant is the regular Cashier at Elko Freight Station, Nevada. He works Monday through Friday, with rest days on Saturday and Sunday. On Saturday, February 22, 1964, a holiday under the Agreement and his rest day, Claimant was required to work. He was paid 8 hours at time and a half for work on his rest day. He claims 8 hours at time and a half for work on a holiday.

The Rules relied on by the Claimant are as follows:

"Rule 20. (g) — Service on Rest Days —

"(1) Service rendered by an employee on his assigned rest day, or days, shall be paid for under Call Rule 21 except as provided in paragraphs 2 and 3 of this rule.

"(2) Service rendered by an employe on his assigned rest day, or days, relieving an employe assigned to such day shall be paid the rate of the position occupied or his regular rate, whichever is higher, with a maximum of eight (8) hours at the rate of time and one-half."

"NOTIFIED OR CALLED"

Rule 21. Employes notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of 3 hours' pay for 2 hours' work or less and if held on duty in excess of 2 hours, time and one-half shall be allowed on the minute basis."

"Rule 22. (b) — Holiday Work —"

"Work performed on the following legal holidays — namely; New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half."

The Claimant also relies on a series of seven awards, issued within the past four years, all of which sustained similar claims and urges that the principle of stare decisis should prevail so as to keep uniform the principle firmly established by the said awards. See Awards 10541, 10679, 11454, 11899, 12453, 12471 and 14138.

Carrier argues that all seven awards interpreted the Telegraphers' Agreement, whereas this case involves the Clerks' Agreement. It urges, instead, that Award 14240 (Perelson) which also involved the Clerks' Agreement, be followed. In that award we denied the claim after a full analysis in which the Telegraphers' awards were held distinguishable.

The principle of stare decisis is a most commendable one. It puts an end to controversy where a provision of an Agreement permits more than one interpretation and ends the parade of disputes seeking to upset the established view. In following stare decisis we do not say that we would necessarily have held the same way if we were presented the issue as a matter of first impression. We merely hold that unless the precedent view is palpably wrong we must not upset it. Award 12240.

In our case the problem is compounded by two conflicting sets of precedents. One is a well-established series of seven cases by seven distinguished referees. The other is a single case which holds differently because of variations in the agreements which otherwise are essentially the same. Unless variations in the agreement can be found in our case, the principle of stare decisis compels us to follow the older, established precedents.

In Award 14240, two essential differences were noted: The Clerks' Agreement did not contain a clause like Rule 7 — Section 1 of the Telegraphers' Agreement, and the Clerks' Agreement had a "Notified or Called" Rule which provided:

"RULE 44 — NOTIFIED OR CALLED

"Except as provided in Rule 46, employees notified or called to perform . . . on their assigned rest day and specified holidays, shall be allowed a minimum of three hours for two hours of work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis. (Emphasis supplied)"

A careful examination of the seven telegrapher awards discloses that Rule 7 — Section 1 was never considered by the Board in the telegrapher cases. Those decisions rested on the obligation of Carrier to pay for service under two separate rules.

In Award 14240, while we found that the Clerks' Agreement did not contain similar language, the main thrust of the Opinion was based upon the language of Rule 44, particularly the juxtaposition of the phrases "assigned rest day" and "specified holidays" combined by the conjunction "and".

In the instant case Rule 21 is the equivalent of Rule 44. In Rule 21 there is no reference to work on "assigned rest day" in conjunction with a holiday. Thus, what was deemed a significant difference in Award 14240 is not present in our case.

Since the agreement before us does not have the distinguishing feature of the agreement in Award 14240, we must follow the established precedents. No other course would honor the principle of stare decisis.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated the Agreement.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14489, CL-15254

This Award is in serious error because it should have followed Award 14240 rather than the awards cited. Under the doctrine of stare decisis, a basic test concerning the authority of a decision as precedent is measured by its similarity or dissimilarity. Award 14240 was considerably closer to the instant docket than the awards cited. The facts and practices were the same. The Agreement was practically identical. It was a decision under the Clerks' Agreement, whereas the decisions followed arose under contracts with another craft. The majority effectively overruled Award 14240 not by finding its reasoning erroneous, but by attempting to distinguish it.

Award 14240 was improperly distinguished. Rule 20 captioned, "Service on Rest Days" was by its express language clearly tied in with the Call Rule: "... Service rendered by an employe on his assigned rest day, or days, shall be paid for under Call Rule 21. . . ." Therefore, for all practical purposes, Rule 21 applied to "Sundays . . . specified holidays" and assigned rest days, by express reference. Accordingly, we were not faced with different provisions than we were in Award 14240. We were dealing with practically identical provisions. The main thrust of Award 14240 was not the element of syntax referred to by the majority, but rather is to be found in the following excerpt:

"Awards 10541, 10679, 11454, 11899 and 12471 cited by the Organization in support of its claim are clearly distinguishable from the material facts in this case. . . .

"In the Telegraphers' Agreement we find the following language:

"Rule 7 — Section 1

“(m) — SERVICE ON REST DAYS:

“1. This paragraph (m) is for the sole purpose of determining the compensation for employes who are required to work on their assigned rest days. IT IS NOT TO BE USED TO CREATE ENLARGE OR TAKE AWAY ANY RIGHTS OR OBLIGATIONS WHICH THE CARRIER OR THE EMPLOYES MAY HAVE BY VIRTUE OF OTHER RULES IN THIS AGREEMENT. . . .” (Emphasis supplied in original)

“We infer from the above language that the parties agreed that in addition to the employe being paid for work performed on his assigned rest day, he was also entitled, in addition thereto, to receive any and all rights and/or benefits that may be due him ‘by virtue of other rules in this agreement.’

“We do NOT find similar language in the Agreement before us.”

The instant Award states that “examination of the . . . telegrapher awards discloses” that Rule 7, Section 1 was not considered by the Board.

A similar provision was before the Board in those dockets. The important point is that the more similar case involving this Organization considered the provision of much significance and even quoted it with emphasis.

Award 14240 was not effectively distinguished. Its similarity with the instant Docket required that it be followed absent a showing of no support for its conclusions.

/s/ T. F. Strunck

/s/ R. E. Black

/s/ P. C. Carter

/s/ D. S. Dugan

/s/ G. C. White