Award No. 14528
Docket No. CL-15495

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5759) that:

(1) Carrier violated rules of the Clerks' Agreement when it failed or refused to properly compensate Messrs. A. J. Bridge, F. M. Gilmore, J. I. Carroll, K. J. Mason, I. L. Mason, K. L. Lamph, H. L. Berratto, C. Aiello, L. H. Peterson, L. J. Plumhof, K. L. Jensen, W. J. Beam, R. J. Anderson, C. T. Ryba, Martin Chaidez, Doyle Wilkerson, M. H. Morris and J. B. Brinton for work performed on May 30, 1964, a regularly assigned rest day which was also a holiday.

(2) The above-named claimants shall now be paid an additional 5 hours and 54 minutes at the rate of time and one-half for time worked on May 30, 1964.

EMPLOYES' STATEMENT OF FACTS: The above-named claimants were employed by the Carrier at its Salt Lake City Freight House. All of the claimants were assigned to a Monday through Friday work week with rest days of Saturday and Sunday.

On Saturday, May 30, 1964, which was Decoration Day, the claimants were all required to report for work to transfer thirteen transloader and consolidation cars. They were paid for 5 hours and 54 minutes at the rate of time and one-half for work performed on that date.

These employes were required to work on their rest day as well as on Decoration Day to perform this work.

Attached as Employes' Exhibits Nos. 1 through 5 are copies of correspondence in this case which was handled up to the Director of Personnel, the highest officer of the Carrier to whom appeals are made on this property.

(Exhibits not reproduced.)

Your attention is directed to Rule 37 (c) of our current Agreement providing that employes worked on more than 5 days in a work week shall be paid time and one-half the basic straight time rate for work on the sixth and seventh days of their work weeks and to Rule 42 (a) providing that work performed on the seven legal holidays, including Decoration Day, shall be paid for at the rate of time and one-half.

These two rules above mentioned are separate and distinct, one providing time and one-half for work performed on a rest day, the other providing time and one-half pay for work performed on the enumerated holidays. It is my belief that these rules read in conjunction with the Award referred to in my letter of August 19, 1964 entitle the claimants to an additional five hours and fifty-four minutes at the rate of time and one-half, as set forth in our Statement of Claim.

I would like to discuss this claim again at our next conference.

Yours truly,

/s/ John H. Moberly
John H. Moberly
General Chairman

McE/rp
cc: Mr. Ronald Jackson"

OPINION OF BOARD: The Claimants held regular assignments covered by the Clerk's Working Agreement and were assigned position to work Monday through Friday with rest days of Saturday and Sunday. The Claimants were called by the Carrier to perform work on their Saturday rest day which day was also a recognized holiday, to wit, Memorial Day. For their services on the claim day involved, the Claimants received payment at time and one-half rate. The Claimants now claim additional compensation for performing services on their rest day which also happened to fall on a recognized holiday. This claim for additional compensation was denied by the Carrier. The Carrier does not deny that the time worked on Memorial Day (May 30th) by each of the Claimants as set forth in the Statement of Claim is correct.

The following rules of the Agreement between the parties are to be considered in the present controversy:

"RULE 37.

OVERTIME AND CALLS

(e) Service on Rest Days. Service rendered by employes on their assigned rest days shall be paid for under Rule 38 unless relieving an employe assigned to such day in which case they will be paid for eight hours at the rate of the position occupied or their regular rate, whichever is higher . . ."

"RULE 38.

Except as provided in Rule 39, employes notified or called to perform work not continuous with, before or after the regular work

period, or on the following holidays, viz: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas, shall be allowed a minimum of three hours for two hours' work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

(Rule 39 not applicable to the issue in this dispute.)

"RULE 42.

HOLIDAY WORK — SUNDAY WORK

(a) 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 for at the rate of time and one-half."

The Carrier refused payment on the ground that the Claimants had already been paid for the services rendered in accordance with its understanding of the Agreement between the parties and that accordingly the Claimants were not entitled to duplicate payment for the single day service rendered.

The issue to be determined by this Board is whether these Claimants are entitled to receive the payments claimed for the work performed by them on their rest day which happened to fall on a recognized holiday pursuant to and in accordance with the terms of THEIR agreement with the Carrier, as heretofore set forth.

This Board has consistently held by a long line of awards that the function of the Board is limited to the interpretation and application of agreements as agreed upon between the parties. We are without authority to add to, take from, write or rewrite rules for the parties, nor may we change the terms of the Agreement which has been entered into, even though the terms may be harsh inequitable and unreasonable. The terms of the Agreement, however onerous they may be, must be enforced if such is the meaning of the language used, and the intention of the parties using the language. There is provision in the law setting forth the method to be used in an endeavor to amend and/or renegotiate an agreement.

In Award 13991 (Dolnick) we said:

> "In interpreting the Rules of a collective bargaining agreement, it is the primary function of the Board to ascertain and effectuate the substantial intent of the parties . . ."

An agreement must be construed as a whole, and the intention of the parties is to be collected from the entire agreement. It is also necessary to consider all of its parts in order to determine the meaning of any particular part. The words or language of the agreement will be given their ordinary

and popularly accepted meaning, in the absence of anything to show that they were used in a different sense. But they may be given a peculiar meaning when such intent of the parties is shown by the context in which they occur.

While we look to the whole agreement to ascertain the intention of the parties to the agreement, if we find that there are contained in the agreement general and special provisions, the special provisions of the agreement must prevail over the general provisions.

In Award 6651 (Rader) we said:

> ". . . It is the general rule in construing of all contracts that a specific provision dealing with a certain condition will prevail over other rules dealing with certain phases of the situation in a general manner and relating to overall matters which may arise . . ." See also Award 7312.

The Agreement between the parties with reference to the payment for services rendered on an assigned rest day, by an employe, is covered by Subdivision "e" of Rule 37, Overtime and Calls. The part of the rule that concerns us is as follows:

> "(e) Service on Rest Days. Service rendered by employes on their assigned rest days shall be paid for under Rule 38 . . ."

Rule 38 referred to in Subdivision "e" of Rule 37, reads as follows:

> "Rule 38. Except as provided in Rule 39, employes notified or called to perform work not continuous with, before or after the regular work period, or on the following holidays, viz: New Year's Day; Washington's Birthday; Decoration Day; Fourth of July; Labor Day; Thanksgiving Day; Christmas, shall be allowed a minimum of three hours for two hours' work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

It is evident from a reading of Rules 37 and 38, that all that Rule 38 does is to set forth the rate of pay and/or allowance that an employe shall receive if he performs services on the respective periods or days listed in the rule. It is also clear from a reading of both rules that it was intended by the parties that when an employe renedred service on an assigned rest day that such employe "shall be allowed a minimum of three hours for two hours' work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis." We are not concerned with the other provisions of Rule 38, as they do not apply to the matter before us.

An examination of the record in this dispute discloses that the Petitioner, when this dispute was being handled on the property and in the Ex Parte Submission, to this Board claims a violation of Rule 42 of the Agreement. The Carrier, on the other hand, when this dispute was being handled on the property and in its Ex Parte Submission to this Board, makes no mention or reference to Rule 42 of the Agreement, which Rule is very important and material to the issue in dispute.

Rule 42 reads as follows:

"Rule 42. (a) 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 for at the rate of time and one-half."

Both parties to this dispute have submitted several awards to substantiate their respective positions. An examination of these awards discloses that, while the basic principles of contract law involved were similar, they all hold and decide that each case should and must be decided based on the language and provisions of the agreement in dispute.

The Carrier in opposing the claim states as follows:

"In their efforts to collect this claim the Employes would have your Board be guided by these awards involving contracts on other property with other than Clerks' Organization where contract rules providing for payment for service performed on rest day and on holiday **were separate and distinct rules.** Such is not the case on this property **where one rule only**; i.e. Rule 38 provides for payment for services performed on rest day-legal holiday. (Emphasis ours.)

. . . The Carrier by contract agreed to pay time and one-half for services performed on a rest day. . . . The Carrier agreed to pay time and one-half for a holiday when worked. . . . However, this Carrier did not agree to make duplicate payment when the days coincidently fall on the same date. In fact Rule 38 specifically provides for the one time and one-half payment for rest day–holiday service."

We agree with the Carrier that where the Agreement between the parties, as in the instant case, contains rules providing for payment for services performed on rest day and on a holiday by separate and distinct rules, that the employes are entitled to be compensated pursuant to the provisions of those rules.

We do not agree with the Carrier that Rule 38 and Rule 38 alone provides for the payment for the services rendered by the Claimants in this dispute. Such contention disregards Rule 42.

Under the specific terms of the Agreement, the Carrier agreed and bound itself to pay compensation under two separate rules, to wit, Rule 38 and Rule 42.

This Board has held in many prior awards, where similar provisions were contained in agreements, that this does not constitute the payment of overtime on overtime.

We will sustain the Claims.

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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14528, DOCKET CL-15495 (Referee Perelson)

Award 14528 is in error. Claimants worked 5 hours and 54 minutes for which they were properly paid the time and one-half rate in accordance with past application of the agreement. There is no provision for duplicate payments, nor for double or triple time rates.

The Majority failed to mention and attributed no significance to the organization representative's testimony before Emergency Board 66 reflecting an intent contrary to the conclusion reached in the instant award.

Award 14240 involving the same craft and indistinguishable agreements was a sound award and should have been followed.

For the above reasons, as well as those set forth in the Dissent to Award 10541, we dissent.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
C. H. Manoogian
H. K. Hagerman

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 14528, DOCKET CL-15495

Award 14528, Docket CL-15495 is quite correct.

In asserting in the Dissent that:

> "Award 14240 involving the same craft and indistinguishable agreements was a sound award and should have been followed."

the Dissentor apparently chose to overlook the fact that in Award 14240 the same Referee as here found that the rule there was clearly distinguishable from those involved in the Awards cited in support of the claim.

It is quite clear that what was there found was that the conjunction "and" coupled rest days **and** holidays in one rule which distinguished that case from those wherein the rules were separate. In this Award 14528 as in Award 14240 the distinction was correctly made. Furthermore, Award 14489 correctly pointed out the distinction between the many precedent Awards and Award 14240.

Award 14528 is correct in all respects and the dissent does not detract at all from the soundness thereof.

D. E. Watkins
Labor Member
8-8-66

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