

Award No. 15052
Docket No. CL-15524

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5729) that:

(1) The Carrier violated the provisions of the Clerks' Agreement when it refused to properly compensate Mr. A. M. Bonnett, Messenger, in the office of Auditor of Freight Revenue, for service performed on Saturday, May 30, 1964, a regularly assigned rest day which was also a holiday.

(2) Carrier shall now be required to compensate Mr. A. M. Bonnett for eight hours at the rate of time and one-half, in addition to that paid for service performed on May 30, 1964.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. M. Bonnett is the regular occupant of the five-day position of Messenger in the Auditor of Freight Revenue's office with a work week of Monday through Friday and rest days of Saturday and Sunday.

When it developed that there would be Messenger work to be performed on Saturday, May 30, Mr. Bonnett, being the senior Messenger off duty on that day, was notified to work.

On June 8, 1964, Mr. Bonnett filed claim for an additional day's pay at time and one-half (Employees' Exhibit A).

This claim was denied by Mr. E. E. Meyer, Auditor of Freight Revenue, in his letter of July 23, 1964 (Employees' Exhibit B).

Claim was appealed to Mr. K. L. Kelley, Comptroller, in Local Chairman Phelps' letter of July 31, 1964 (Employees' Exhibit C).

Comptroller Kelley denied the appeal in his letter of September 17, 1964 (Employees' Exhibit D).

Claim was appealed to Mr. J. W. Hammers, Jr., Manager of Labor Relations, by the General Chairman in his letter of November 16, 1964 (Employees' Exhibit E).

THE WITNESS: In the absence of such an arrangement then it is the single time and one-half pay.

Q. (By Mr. Davis.) That answers my question. * * *

The above excerpt from the transcript of the proceeding clearly reveals that it was not the intent of the Organization to collect two days' pay at the punitive rate for an employee performing service on a holiday and rest day combined.

Further evidence of the Organization's previous interpretations of the rules in question is reflected in the disposition of the following claims which were processed on the property:

(1) Claim in behalf of Yard Clerk Drennan of the CD District for an additional eight hours' pay at pro rata rate for services performed on Memorial Day, May 30, 1959, which day was one of Drennan's days of rest.

(2) Claim in behalf of Yard Clerk George Joerss for a day's pay for Thanksgiving Day, November 28, 1957, because he was not called to fill a vacancy on that date, which was an assigned rest day.

(3) Claim on behalf of Yard Clerk Fayollat for a day's pay at the punitive rate for December 25, 1953, because of failure to call him on his rest day.

It was clear from our discussions that your position rested solely on the Board Awards referred to, without reference to the position of the Organization at the time of adoption of the rules referred to or recognized practices during the period the rules were in effect prior to rendition of the Third Division Awards upon which you rely.

The claims are wholly without merit, lacking the support of Agreement rules, and are accordingly denied."

Wages and working conditions of the claimant in this dispute are covered by Schedule Agreement between the parties effective January 1, 1950, copy of which is on file with this Division of the National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Bonnett is the regular occupant of the five-day position of Messenger in the Auditor of Freight Revenue's office with a work week of Monday through Friday and rest days of Saturday and Sunday.

There was messenger work to be performed on Saturday, May 30, 1964, Decoration Day, and Claimant, being the senior Messenger off duty on that day, was notified to work.

Carrier compensated Claimant under Rule 39 (e) and Rule 40, for work on an unassigned day.

"Rule 39 (e). Service on Rest Days. Service rendered by employees on their assigned rest days shall be paid for under Rule 40."

**"RULE 40.
NOTIFIED OR CALLED**

Employees notified or called to perform work not continuous with, before or after, the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

Employees notified or called to perform work on their assigned rest days or on holidays shall be paid a minimum of eight (8) hours at time and one-half rate."

Claimant demands an additional payment under Rule 44 (b) for working on Decoration Day.

"Rule 44 (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 for at the rate of time and one-half."

This problem has been before the Board on several other occasions. The Organization contends that awards which control include: 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489 and 14528. The Carrier contends that we should follow Award 14240 and Award No. 23 of Special Board of Adjustment No. 564.

We have studied the awards cited and are persuaded that the principle of stare decisis compels us to follow what appears to be the weight of authority in the decided cases. We therefore will 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 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 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 14th day of December 1966.

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