



Award No. 15340
Docket No. CL-15962

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5847) that:

1. The Carrier violated the agreement between the parties when it failed to properly compensate Roman F. Savoy, Crew Clerk, Superior Yard, Superior, Wisconsin, for work performed on November 26, 1964 and January 1, 1965, both legal holidays.

2. The Carrier shall now compensate Roman F. Savoy for eight hours at the time and one-half rate for each day, November 26, 1964 and January 1, 1965, in addition to the amounts already received.

EMPLOYEES' STATEMENT OF FACTS: At the time of the claims Mr. Savoy was regularly assigned to the 7-day position of Crew Clerk with assigned hours of 8:00 A. M. to 4:00 P. M., and with an assigned work week of Saturday through Wednesday with Thursday and Friday as rest days. On Thursday and Friday he was relieved by a Relief Clerk.

On Thursday, November 26, 1964 (Thanksgiving Day) there was not an available qualified employee to relieve Mr. Savoy and therefore he was required to work the Crew Clerk's position on his day of rest. On Friday, January 1, 1965 (New Year's Day) there was not an available qualified employee to relieve Mr. Savoy and, therefore, he was required to work the Crew Clerk's position on his day of rest. For these two dates Mr. Savoy was paid eight hours at one and one-half times his basic daily rate.

On January 24, 1965 Mr. Savoy filed a claim with management requesting an additional eight hours' holiday pay for November 26, 1964 (Employees' Exhibit No. 1) and a claim for an additional eight hours' holiday pay for January 1, 1965 (Employees' Exhibit No. 2. On January 29, 1965 Mr. W. T. Sloan, Assistant Superintendent, denied the claim for additional payment (Employees' Exhibit No. 3).

Subsequently, Mr. Bartley Gall, Division Chairman representing the employees at Superior, Wisconsin, appealed the decision of Mr. Sloan to the

such service is required within one hour after the regular work period, it shall be deemed to be continuous therewith.

* * * * *

In addition to the provisions for the time and one-half rate for a minimum two hours' call on rest days and specified holidays in the above quoted portion of Rule 38, specific provisions for the time and one-half rate for working on a designated holiday are contained in Schedule Rule 42 B., which provides:

"RULE 42.

SUNDAY WORK — HOLIDAY WORK

* * * * *

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. (See Appendix E.)

NOTE: In the Dominion of Canada, the following holidays will be observed instead of those enumerated above: New Year's Day, Good Friday, Empire Day, Dominion Day, Labor Day, Thanksgiving and Christmas."

Throughout the handling of this case on the property, the Organization has relied upon Schedule Rules 36 E and 42 B, above quoted, as allegedly supporting the claim. The position of the Carrier throughout the handling of this case on the property was that payment of eight hours at the time and one-half rate satisfies the requirements of both rules; that nothing in the agreement indicates that the triple time rate or duplicate payment under each rule should be made for working once, and that the claimant was paid in accordance with many years of past practice.

The correspondence of the parties has not been reproduced since it is assumed that it will be attached to the Organization's Submission.

OPINION OF BOARD: Claimant was required to work November 26, 1964 (Thanksgiving Day) and January 1, 1965 (New Year's Day). Both days were rest days in Claimant's work schedule. The Carrier paid time and one-half for the rest days for a period of eight hours each day but declined to pay an additional time and one-half for the two holidays for eight hours each day.

The Organization relies upon the Agreement to support the Claim:

Rule 36 (e) provides:

"... Service rendered by employes on assigned rest days (other than Sunday) shall be paid for under the call rule. . . ."

Rule 38 provides:

"Employees notified or called to perform work . . . on days of rest and specified holidays shall be allowed a minimum of three (3) hours for the 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. . . ."

Rule 42 (B) provides:

" . . . Work performed on the following legal holidays, namely New Year's Day . . . Thanksgiving Day . . . shall be paid for at the rate of time and one-half."

The Carrier relies upon Rule 36 (d) in denying the claim which provides, "There shall be no overtime on overtime; . . ."

The Claimant is seeking compensation for overtime which is expressly provided for in the agreement under Rule 42 (B). The fact that he has previously collected compensation for overtime under Rule 36 (e) is not a defense to this claim. If the Carrier had wished to avoid the payment of overtime for holidays falling on rest days, a proviso could have been incorporated in the Agreement to effect that intent. Rule 36 (d) does not constitute such a proviso, the clear intent of that paragraph being to restrict the payment of overtime in situations specified in the preceding three paragraphs of Rule 36.

Numerous preceding awards have involved similar, if not identical, fact situations and the weight of authority has sustained these claims. See Awards: 10541, 11454, 11899, 14977, 14978, 15000, and 15052.

We are not unaware of Awards 14240 and 14489, wherein the equivalent of above-mentioned Rule 38 was discussed. However, we are able to ascertain but one intention from reading the language contained within the four corners of Rule 38, i.e., to establish a rate of pay for work performed pursuant to call on regular work days, rest days and holidays. The function of the word "and" is to add the word "holidays" to the paragraph for the purpose of specifying a call rate for holidays. If we narrow the interpretation, so that this rule affects rest days which fall on the date of specified holidays, the call rule would be inadequate by reason of the omission of language specifying call rates for rest days and holidays which do not coincide. See Award 15000.

The agreement was violated and the claim is sustained.

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 10th day of February 1967.