

Award No. 15800
Docket No. CL-15998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5879) that:

(1) Carrier violated the Clerks' Agreement when it refused to properly compensate the below-listed employes for additional time as indicated at the time and one-half rate for time worked on February 22, 1965, a regularly assigned rest day which was also a holiday:

Name	Title	Amount
L. Cloven	Supervisor	\$34.66
M. Drake	Supervisor	34.66
S. R. James	Supervisor	34.66
G. Slaughter	Checker	33.58
F. Lusher	Checker	33.58
O. Williams	Checker	33.58
T. Tinsley	Checker	33.58
B. Miller	Checker	33.58
T. Smart	Checker	33.58
N. Tinsley	Checker	33.58
R. Alexander	Checker	33.58
E. Kern	Delivery Clerk	32.98
F. Yniguez	Delivery Clerk	32.98
S. McLaurin	Delivery Clerk	32.98
E. Sloan	Delivery Clerk	32.98
J. Butler	Delivery Clerk	32.98
P. N. Lopez	Delivery Clerk	32.98
L. Jackson	Delivery Clerk	32.98
H. Jones	Delivery Clerk	32.98
J. Jasso	Delivery Clerk	32.98

D. Isom	Delivery Clerk	32.98
J. Scarver	Delivery Clerk	32.98
L. Collins	Delivery Clerk	32.98
L. Marshall	Delivery Clerk	32.98
H. S. Gayden	Lift Truck Operator	31.54
C. Davis	Lift Truck Operator	31.54
R. Jeter	Lift Truck Operator	31.54
C. Howard	Lift Truck Operator	31.54
P. Burakis	Truck Loader	31.24
H. Gamble	Truck Loader	31.24
I. Garrett	Truck Loader	31.24
A. Montgomery	Truck Loader	31.24
G. N. Lopez	Truck Loader	31.24
E. R. Gamble	Truck Loader	31.24
E. Wilson	Truck Loader	31.24
S. Barden	Caller	31.00

(2) Carrier shall now be required to compensate the above-named employees in the amounts indicated above, which are the time and one-half daily rates.

EMPLOYEES' STATEMENT OF FACTS: There is in force and effect a collective bargaining agreement by and between the parties, effective August 14, 1950 (revised as of January 1, 1963), a copy of which is on file with the Board, and by reference is made a part of this submission.

The claim was handled on the property in the usual manner, through the highest designated officer of the Carrier to handle such matters, and the dispute was not resolved.

The Claimants worked eight (8) hours on their assigned rest day which was also a holiday. The Carrier paid them eight (8) hours' pay for the holiday, and also paid them eight (8) hours at time and one-half for working on the holiday, as required under the terms of Rule 8 of the Agreement, but refused to pay them eight (8) hours at time and one-half for working on their rest day as provided for in the same rule.

The Claimants have regular assigned positions similar to the positions worked on February 22, 1965 with a work week of Tuesday through Saturday, rest days Sunday and Monday. Washington's Birthday, February 22, 1965, fell on Monday. It is a recognized holiday in the Agreement and a regular assigned rest day for the Claimants.

Claim was originated by Local Chairman Samuel Graff of the Brotherhood on March 11, 1965 in a letter addressed to Mr. M. L. Zadnichek, Superintendent for the Carrier, and same was declined by Mr. Zadnichek on March 23, 1965. (Employees' Exhibits Nos. 1 and 2.)

Vice General Chairman Leo L. Zych appealed the claims to Staff Officer, Mr. J. D. Lawson, the highest designated officer to whom appeals may be made, and requested that he review the file and instruct Mr. Zadnichek to pay the claims. (Employees' Exhibit No. 3.)

On April 12, 1965, Mr. Dawson acknowledged receipt of Mr. Zych's letter and requested that he list the claims for discussion at their next conference. (Employees' Exhibit No. 4.)

On April 21, 1965, Mr. Dawson again wrote Mr. Zych and declined the claims, even though they had not had an opportunity to discuss the claims. (Employees' Exhibit No. 5.)

On May 6, 1965, a conference was held with Mr. Dawson, at which conference Vice General Chairman L. L. Zych and General Chairman E. F. Holzhauser were present. Mr. Dawson again declined the claims on the grounds that there is no provision for overtime on overtime in the Agreement and that the employees have been similarly paid in other years when working on a rest day and holiday. He again confirmed his position in a letter dated May 10, 1965. (Employees' Exhibit No. 6.)

The claims were again discussed with Mr. Dawson at a conference on June 24, resulting in no change in his decision.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claim date, February 22, 1965, was one of the legal holidays referred to in Rule 8 of the collective agreement applicable in this case. It was necessary to work the freight house force on this holiday due to the volume of business, and each of the claimants were used at the overtime rate in accordance with the past practice at this facility. Each claimant was qualified for holiday pay and received 8 hours' pro rata pay therefor in addition to 8 hours at the overtime rate account performing work on the claim date. This is 20 hours' pay, or 2½ times the daily rate for each claimant who performed 8 hours of work.

The Petitioner has claimed an additional day's pay at the overtime rate account the claim date was also the Claimants' rest day. The claim was denied on the basis that payment already allowed was proper under the agreement rules, and identical to that paid under similar circumstances at this facility for many years.

The Schedule of Rules Agreement effective August 14, 1950 and revised as of January 1, 1963, covering employees who perform work of The Universal Carloading and Distributing Company, Inc., represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, who are employed at Chicago Freight House No. 10 and the Universal Freight House at Minneapolis, Minnesota, is on file with the Board and by this reference is made a part of this submission.

OPINION OF BOARD: The issue in this case (how to pay for work on a holiday which is coincidentally a rest day) has been studied and dealt with in many awards since Award 10541, and in almost all cases with the same conclusion; included in such awards was one involving the same parties as in this case (Award 15398) in which we said:

"If we apply the approach to construction of the labor agreement used in these awards (Award 10541, etc.) . . . we must treat the situation as involving two distinct employment situations, each of which entitles the involved employee to pay according to the rule

governing that employment situation even if the governing rules are headed by the same number."

Carrier argues here, as it did not in the case involved in Award 15398, that practice and other evidence of intention of the parties which is in this record should lead the Board "to overrule the erroneous awards that have been issued." (i.e., Award 10541 and those which followed it).

Even though, were it a case of first impression, he might reasonably decide it differently, a referee in deciding a case involving an already firmly settled issue, in order to avoid the mischief involved in unsettling a settled issue, is bound to follow the awards which settled the issue—unless those awards are found to be clearly and palpably in error. The record before us does not convince us that Award 10541 and those which followed it were so in error; nor do the facts involved distinguish the issue here from that involved in those cases.

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 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 19th day of September 1967.