Award No. 16099
Docket No. CL-16444

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

CHICAGO UNION STATION COMPANY

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

STATEMENT OF CLAIM: Claim of the Carrier that the claims of the following named employes for two days' pay at time and one-half rate when not called to work on Labor Day, September 6, 1965, when they were on a regular assigned rest day are not valid:

G. J. Negar
Leonard Baer
W. McAleer
J. M. Czerwiec
F. A. Calliendo
R. E. Tallman
A. Zeitler
H. F. Madsen
W. H. Blume
Lester Gradt
R. L. Messmer
B. Bernstein
R. K. Cole
J. S. Curtis
R. E. Herberger
W. Heppner
M. A. Crowell
T. A. Casper
V. E. Roche
E. A. Rasmussen
J. E. Suchodolski

CARRIER'S STATEMENT OF FACTS: The claimants listed in the foregoing Statement of Claim are regularly assigned mail handlers with the Chicago Union Station Company and on Monday, September 6, 1965, the Labor Day Holiday, each was off on his respective rest day. Due to the fact that September 6, 1965 was a rest day for each of the claimants, and a legal holiday, unassigned employes were assigned to work, as it was not the unassigned employes' day off and in each case the unassigned employe used had registered for holiday work. The Organization has claimed two days' pay at the overtime or penalty rate for September 6, 1965, for each claimant and/or employe listed in Carrier's Statement of Claim, basing the claim on Rules 45 and 39. Each will be quoted later in this Submission.

The Organization has instituted separate claims for each employe listed in Carrier's Statement of Claim. Each claim is, however, for the same date and the circumstances involved in each claim are the same. Carrier will,

therefore, attach the correspondence involving one such claim to avoid repetition and lessen the volume of attachments.

Claim of G. J. Negar was presented to the Union Station Company under letter dated October 25, 1965 (Carrier's Exhibit No. 1), and denied by letter dated November 27, 1965 (Carrier's Exhibit No. 2). The claim was then appealed to the General Manager of the Chicago Union Station Company by letter dated January 8, 1966 (Carrier's Exhibit No. 3) and denied by him on January 26, 1966 (Carrier's Exhibit No. 4).

(Exhibits not reproduced.)

EMPLOYES' STATEMENT OF FACTS: On September 6, 1965, the Labor Day Holiday, which is one of the designated holidays covered by the Clerks' Agreement and also the regularly assigned rest day of each of the above named employes, hereafter referred to as Claimants, each of the Claimants was registered for holiday and rest day work in accordance with the effective Overtime Agreement.

On September 6, 1965, the Labor Day Holiday, each of the following unassigned employes was used to perform mail handler duties:

Samuel Turner	L. C. Wilson
Freddie Morgan	P. N. Smith
W. D. King, Jr.	S. L. Jones
Roosevelt Stewart	L. G. Hudson
Willie Stevenson	E. B. Dulaney
J. G. Lee	Ezekal Robinson
Ronald Hart	Leon Groce
J. L. Conley	J. R. Malone
William Hawkins	Dave Curtis
A. R. Penacs	James Griffen, Jr.
R. C. Hoffman, Jr.	

Each of the Claimants named in Carrier's Statement of Claim was observing his regularly assigned rest day, was available, but was not called to work on the holiday in question.

OPINION OF BOARD: Organization has filed claims for the employes named in Carrier's Statement of Claim; for convenience, we shall call those claims "Organization's Claims" and the named employes "Employe Claimants"; we shall call the claim of Carrier that Organization's Claims are not valid "Carrier's Claim".

The Employe Claimants are regularly assigned mail handlers. On September 6, 1965, which was the Labor Day Holiday, each was off on his rest day. Unassigned employes were assigned to the mail handler duties on that day. The Employe Claimants were each properly registered for holiday and rest day work in accordance with the effective Overtime Agreement.

Carrier claims that the unassigned employes who performed the work on Labor Day were also properly registered for such overtime work under the Overtime Agreement. Organization argues that because as unassigned

employes they were not assigned to any zone and had no regularly assigned rest days, they could not properly register for overtime under paragraph 3 of the Overtime Agreement.

Carrier cites Rule 23(a), which provides that "An extra board may be maintained in the Baggage and Mail departments . . ."; and infers that the unassigned employes here involved were on such an extra board, and from that appears to conclude that they were assigned to a zone. We cannot find from the evidence, however, that the unassigned employes had been assigned to any particular zone within the meaning of the Overtime Agreement, or that any of them had regularly assigned rest days.

Pertinent portions of the Overtime Agreement read:

"1. The term 'overtime' as used in this memorandum is intended to mean all time paid for at penalty rate for work performed after eight hours on any day, on Holidays (Rule 45), and/or regularly assigned rest days.

2. The term 'zone' as used in this memorandum will be as follows:

Baggage Department will be considered one zone.

Entire mail shift assigned 11:30 P.M. to 8:00 A.M. will be considered one zone.

Day and afternoon mail shifts will have four zones, i.e., (1) PRR-CM&O, (2) BURLINGTON, (3) MILWAUKEE, (4) Basement.

3. Employes desiring to work overtime within their own zone will file written notice with their foreman signifying their desire for such work, whether daily, Holiday or Rest Day.

4. When necessary to work employes overtime, the senior registered employe in the zone will be given preference, except:

* * * * *

(d) Regular **registered** men whose regular day off falls on a Holiday will not be used until all other **registered** employes have been assigned. . . .

6. When sufficient employes are not available to work overtime in a zone, employes will be assigned from the other zones on a seniority basis, providing they file with their Foreman written notice of their desire for such work. . . ."

Carrier argues that the phrase "all other **registered** employes" used after the phrase "Regular **registered** men" permits of no other inference than that other employes than regularly assigned employes were intended to have the right to register for overtime under the Overtime Agreement. If we were to read this inference into 4(d), we would find a conflict between 4(d) and paragraph 3, which, read as normal English, indicates the inten-

tion that registration for overtime was to be restricted to employes assigned to a zone, as that term is defined in paragraph 2. But "Regular registered men" is only part of the phrase describing those "other" than whom "all other registered employes" refers to: the whole phrase is "Regular registered men whose regular day off falls on a Holiday"; and, when the entire phrase is read in context, we find that it can be read as being consistent with the normal reading of paragraph 3 as limiting the right to register for overtime to employes who are assigned to a zone; thus the inference which the Carrier seeks to draw is neither necessary nor logical. We read 4(d), therefore, as a whole and in such a way as to avoid imposing contradictions or obscurities on the rest of the Agreement.

We recently had the same question in a case involving the same parties, and decided it in our Award 15948 where we agreed with the Organization that only employes who are regularly assigned to zones and who have regularly assigned rest days may register for overtime under this Overtime Agreement. We have found nothing in this record to convince us to hold differently in this case. Thus we conclude that Organization's Claims are valid, and that Carrier's Claim is not.

Carrier raises the question that the amount of compensation claimed in Organization's Claims (two days' pay at time and one half), is not supported by the Agreement. We dealt with this question in our Award 15398, among others; there we said:

> ". . . had Claimant been permitted to work as he should have been, he would have been entitled to premium pay twice for working February 28 — once for the employment situation of working on his Birthday holiday, and once for the employment situation of working on his rest day. We are of the opinion that Claimant should be paid what he would have been paid had Carrier not violated the Agreement. . . ."

In requiring the payment of two days' pay in that case, we followed a series of our awards, beginning with Award 10541. Although the overwhelming bulk of our awards since 10541 have followed 10541, a few have not. In this case we find ourselves in agreement with the statements found in Award 5332 of the Second Division (Weston) and in Award No. 18 of Public Law Board No. 32 (Rose), where the referees were recently faced with the same problem.

Award 5332 says:

> "This Referee is very much in favor of applying the principle of stare decisis when a substantial number of awards by a number of different referees have resolved the problem. By adhering strictly and evenly to that principle, there is much to be gained in stability, economy, and avoidance of multiple claims, and both carriers and organizations are in a position to rely on a question as settled in applying the rules and disposing of grievances. There are quite a number of principles that have been accepted over the years because of a reasonably consistent lines of awards that could well be resolved the other way if they were being encountered for the first time, and if the stare decisis concept were not accepted.

We recognize that there have been several recent awards that have not accepted the view of the great majority of awards on the instant question (see Award 5237, and those therein cited). It is not our conclusion that that minority is necessarily in error as to the merits of the dispute. Our holding is that, irrespective of the arguments now raised with respect to the interpretation of the rules in question, the claim must be sustained on the basis of the stare decisis principle which is applicable to, and of compelling force in, the present case."

Award No. 18 says:

"The claim poses the question whether the incumbent of a regular position is entitled to an additional time and one-half payment for the same eight hours worked on a day which is his rest day and an assigned holiday. The vast majority of the awards have answered this question in the affirmative, and sustained such claims. Third Division Awards 10451, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 15000, 15052, 15144, 15226, 15340, 15361, 15440, 15450, 15527, 15528, 15531, 15553, and 15661.

In the face of such a volume of sustaining awards, it is unrealistic for us to deal with the issue as one of first impression. These awards interpret and apply rules which stem from national agreements. We are obliged to recognize that the industry has a substantial interest in the stability and uniformity of application of such rules while they are continued in effect. At this juncture of the precedents, this vital interest should not be disturbed because the question is raised by a claim on different property and in another forum."

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 Carrier violated the Agreement.

AWARD

Carrier's Claim denied and Organization's Claims sustained; Carrier shall pay to each employe listed in the Claim two days' pay at time and one-half.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1968.

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