



Award 16250
Docket CL-16700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY—TEXAS AND LOUISIANA LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6195) that:

(1) The carrier violated the current agreement between the parties effective July 1, 1956 when it refused to properly compensate Clerk A. B. Satterwhite, Stockman, Houston, Texas, for work performed on January 1, 1966.

(2) The carrier shall now be required to compensate Clerk A. B. Satterwhite for eight hours at the time and one-half rate of position of Crew Clerk for service performed on New Year's Day in addition to eight hours at the time and one-half rate which he received for working his rest day of January 1, 1966.

EMPLOYEES' STATEMENT OF FACTS: On January 1, 1966, A. B. Satterwhite was assigned to the position of Stockman, Purchases-Stores Department, Houston, Texas, having a work week of Monday through Friday, with Saturday and Sunday as rest days. Thus, Saturday, January 1, 1966, was a rest day and also a holiday for Satterwhite. On this same date J. T. Bellmar was assigned to position of Crew Clerk Position No. 58, 12 midnight to 8:00 a.m., with a work week of Saturday through Wednesday, rest days Thursday and Friday. Bellmar laid off sick on New Year's Day, January 1, 1966, and Satterwhite being the senior available qualified employe was called to fill the vacancy in Position No. 58 for which he was paid eight hours at the time and one-half rate for working on his rest day; however, he was not paid for the work which he performed on the holiday. Satterwhite claimed 16 hours pay at the time and one-half rate on his time card for the work he performed on January 1, 1966. The Chief Timekeeper advised him that he would only be allowed eight hours at the overtime rate for the work he performed on that Day, whereupon he filed formal claim with Master Mechanic J. Fleissner on February 7, 1966. Mr. Fleissner declined the claim under date of February 28, 1966. The claim was progressed in the usual manner and final appeal was taken to Mr. J. D. Davis, Manager of Personnel who declined it under date of June 15, 1966. This claim was discussed on several occasions with carrier representatives in the Personnel Department and in formal conference on September 19, 1966, at which time it was again declined. Correspondence passing with respect to the claim is attached hereto as Employees Exhibit 1 to 16.

CARRIER'S STATEMENT OF FACTS: A. B. Satterwhite, a clerk, held regular assignment of position of Stockman in Carrier's general stores at Houston, Texas. Incumbent of this position was assigned to work 8 AM to 12 Noon; 12:30 PM to 4:30 PM, Monday through Friday with Saturday and Sunday rest days. January 1, 1966, the incumbent of another position of Crew Clerk #58, assigned to work 12 Midnight to 8 AM, in the diesel shops at Houston was not available. January 1, 1966 was a regular workday for Position #58. Satterwhite was the senior clerk at this location who had asked to be used for overtime work in emergencies and was called and worked the eight-hour tour of duty of Position #58.

January 1, 1966, was Saturday, which was one of Satterwhite's rest days and was also New Year's Day, a legal holiday as provided in Rule 45(b) of the Clerks' Agreement. For the eight hours service performed on Position #58, Satterwhite was allowed 8 hours at time-and-one-half rate.

Clerk Satterwhite presented claim for 16 hours time and one-half for the eight hours service performed. The claim was declined because the agreement rules did not provide a basis for it. Claim was handled in usual manner and was declined at all levels in local handling.

May 27, 1966, General Chairman, BofRC presented the claim by letter to Carrier's Manager of Personnel. June 15, 1966, claim was declined to him by letter. Claim was discussed in conference several times, the last time being September 19, 1966. Conferences failed to bring settlement of the claim. It is now properly before the Third Division, NRAB, by virtue of President Dennis' notice of December 16, 1966. Correspondence with the General Chairman is reproduced as **CARRIER'S EXHIBIT NO. 1.**

There is an agreement between the parties effective July 1, 1956, a copy of which is on file with the Board, and by reference, the Agreement is made a part of this submission.

OPINION OF BOARD: A long line of Awards of this Division since No. 10541 has sustained claimants seeking 16 hours' pay at time and one-half, when a holiday falls on a worked rest day. Some subsequent Awards have indicated doubt about the wisdom of 10541, but have affirmed it nevertheless on the basis of *stare decisis* and the importance of stability.

The course was momentarily reversed in Award 14240. However, succeeding Awards reverted to the sustaining decision of 10541. Thus *stare decisis* must be deemed a significant element in deciding this issue.

However, there have been some thoughtful reviews of the question, notably Referee Dolnick's Award No. 23 (Special Board of Adjustment No. 564), which analyzed the line of cases in this Division, Referee Robertson's Award No. 3 (Special Board of Adjustment No. 603) and Referee Johnson's Second Division Award No. 5317. Although the holdings of the Third Division have been unanimous since 10541, with the exception of 14240, the minority view elsewhere justifies some examination of the issue other than by reference to *stare decisis*.

Various referees have held that the Agreement is clear in upholding claimants, while others relied largely on *stare decisis*, at the same time questioning the soundness of 10541. We do not find that the Agreement is clear; it is subject to more than one interpretation. One would expect that pyramiding of pay to the extent possible under this Agreement would have been more explicitly set forth, if actually intended. Mr. Leighty's testimony,

cited by Carrier, is also evidence that the intent alleged by the Organization is far from open and shut.

Where there is ambiguity, practice is helpful in discerning what the parties meant. In this case Carrier asserts that its practice since 1949 was to pay only eight hours at time and one-half in these situations. That practice, it was said, was accepted by the Organization and therefore "constitutes recognition of the proper meaning of the rules."

On the property, the claim noted that two other named employees had previously been paid in the manner sought by Claimant where the circumstances were similar, one for May 30, 1965, and the other for December 25, 1965. Since the record reveals no denial of this by Carrier, it must be accepted. (The Organization's rebuttal statement said that still other unnamed employees had been similarly paid, but since this was not raised on the property it must be disregarded here.)

The two cases cited by Claimant defeat Carrier's position that its practice since 1949 has been the same. Why Carrier departed from its former practice was unexplained.

Practice, to have value in interpreting ambiguous documents, must be clear, consistent and unvarying. Carrier's practice does not meet this test. On the contrary, its more recent approach coincides with the Organization's view of the Agreement.

Under the circumstances Carrier has not shown that the line of Third Division Awards should be ignored, since its own latest practice supports Claimant's position.

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 19th day of April 1968.

Keehan Printing Co., Chicago, Ill.

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