



Award No. 16626
Docket No. TE-15708

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington & Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when on June 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, July 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, August 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, September 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 28, 29, 30, October 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, November 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, December 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 1964, January 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, February 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, March 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, 30, 31, April 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, May 1, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 1965, it failed and refused to properly compensate the occupant of the Agent-Operator position at Mt. Pleasant, Iowa.

2. Carrier shall compensate the occupants of the Agent-Operator position at Mt. Pleasant, Iowa at the time and one-half rate as follows:

L. P. HIXSON - 1964

June 1 - 1 hour; June 2 - 45 minutes; June 3 - 45 minutes; June 7 - 3 hours; June 8 - 45 minutes; June 10 - 1 hour; June 11 - 1 hour; June 12 - 50 minutes; June 13 - 45 minutes; June 14 - 3 hours; June 15 - 50 minutes; June 16 - 1 hour; June 17 - 2 hours 20 minutes;

June 18 - 2 hours 10 minutes; June 19 - 2 hours 15 minutes; June 20 - 45 minutes; June 21 - 3 hours; June 22 - 2 hours 30 minutes; June 23 - 45 minutes; June 24 - 1 hour; June 25 - 2 hours 20 minutes; June 26 - 45 minutes; June 27 - 45 minutes; June 28 - 3 hours; June 29 - 45 minutes; June 30 - 45 minutes; June 9 - 1 hour.

K. D. LEEDOM - 1964

July 1 - 45 minutes; July 2 - 2 hours 30 minutes; July 3 - 30 minutes; July 4 - 8 hours 15 minutes; July 6 - 30 minutes; July 7 - 30 minutes; July 8 - 45 minutes; July 9 - 2 hours; July 10 - 45 minutes; July 11 - 30 minutes; July 13 - 15 minutes; July 14 - 15 minutes; July 15 - 15 minutes; July 16 - 45 minutes; July 17 - 30 minutes.

H. J. EARLEY - 1964

July 20 - 40 minutes; July 21 - 40 minutes; July 22 - 30 minutes; July 23 - 40 minutes; July 24 - 40 minutes; July 25 - 30 minutes; July 27 - 30 minutes; July 28 - 40 minutes; July 29 - 30 minutes; July 30 - 50 minutes; July 31 - 30 minutes; August 1 - 30 minutes; August 3 - 40 minutes; August 4 - 30 minutes; August 5 - 40 minutes; August 6 - 40 minutes; August 7 - 30 minutes; August 8 - 30 minutes; August 10 - 40 minutes; August 11 - 40 minutes; August 12 - 50 minutes; August 13 - 30 minutes; August 14 - 1 hour; August 15 - 30 minutes; August 17 - 1 hour; August 18 - 40 minutes; August 19 - 50 minutes; August 20 - 30 minutes; August 21 - 50 minutes; August 22 - 25 minutes; August 26 - 40 minutes; August 27 - 50 minutes; August 28 - 50 minutes; August 29 - 40 minutes; August 31 - 40 minutes; September 1 - 40 minutes; September 2 - 40 minutes; September 3 - 30 minutes; September 4 - 40 minutes; September 5 - 40 minutes; September 7 - 30 minutes; September 8 - 40 minutes; September 9 - 40 minutes; September 10 - 40 minutes; September 11 - 50 minutes; September 12 - 50 minutes; September 14 - 40 minutes; September 15 - 30 minutes; September 16 - 40 minutes; September 17 - 40 minutes; September 18 - 40 minutes; September 21 - 1 hour; September 22 - 40 minutes; September 23 - 50 minutes; September 24 - 40 minutes; September 25 - 1 hour; September 26 - 30 minutes; September 28 - 2 hours; September 29 - 40 minutes; September 30 - 50 minutes; October 1 - 40 minutes; October 2 - 40 minutes; October 3 - 40 minutes; October 5 - 40 minutes; October 6 - 40 minutes; October 7 - 40 minutes; October 8 - 1 hour; October 9 - 1 hour; October 10 - 40 minutes; October 12 - 1 hour; October 13 - 1 hour; October 14 - 50 minutes; October 15 - 50 minutes; October 16 - 40 minutes; October 17 - 50 minutes; October 19 - 40 minutes; October 20 - 40 minutes; October 21 - 40 minutes; October 22 - 30 minutes; October 23 - 1 hour; October 24 - 40 minutes; October 25 - 2 hours 30 minutes; October 27 - 30 minutes; October 28 - 30 minutes; October 29 - 40 minutes; October 30 - 1 hour; October 31 - 40 minutes; November 2 - 40 minutes; November 3 - 40 minutes; November 4 - 50 minutes; November 5 - 30 minutes; November 6 - 40 minutes; November 7 - 50 minutes; November 9 - 30 minutes; November 10 - 30 minutes; November 11 - 40 minutes; November 12 - 40 minutes; November 13 - 40 minutes; November 14 - 30 minutes; November 16 - 40 minutes; November 17 - 40 minutes; November 18 - 40 minutes; November 19 - 40 minutes; November 20 - 40 minutes; November 21 - 40 minutes;

November 23 - 40 minutes; November 24 - 40 minutes; November 25 - 1 hour; November 26 - 8 hours 30 minutes; November 27 - 40 minutes; November 28 - 30 minutes; November 30 - 40 minutes; December 1 - 40 minutes; December 2 - 40 minutes; December 3 - 1 hour; December 4 - 1 hour; December 5 - 40 minutes; December 7 - 40 minutes; December 8 - 1 hour; December 9 - 1 hour; December 10 - 40 minutes; December 11 - 1 hour; December 12 - 40 minutes; December 14 - 1 hour; December 15 - 50 minutes; December 16 - 1 hour; December 17 - 1 hour; December 18 - 1 hour; December 19 - 1 hour; December 21 - 50 minutes; December 22 - 50 minutes; December 23 - 50 minutes; December 24 - 40 minutes; December 25 - 8 hours 30 minutes; December 26 - 40 minutes; December 28 - 1 hour; December 29 - 40 minutes; December 30 - 1 hour; December 31 - 1 hour.

H. J. EARLEY - 1965

January 1 - 8 hours 30 minutes; January 2 - 40 minutes; January 4 - 40 minutes; January 5 - 40 minutes; January 6 - 40 minutes; January 7 - 1 hour; January 8 - 30 minutes; January 9 - 30 minutes; January 11 - 40 minutes; January 12 - 40 minutes; January 13 - 30 minutes; January 14 - 40 minutes; January 15 - 40 minutes; January 16 - 40 minutes; January 18 - 40 minutes; January 19 - 40 minutes; January 20 - 40 minutes; January 21 - 40 minutes; January 22 - 1 hour; January 23 - 1 hour; January 25 - 40 minutes; January 26 - 40 minutes; January 27 - 40 minutes; January 28 - 40 minutes; January 29 - 40 minutes; January 30 - 40 minutes; January 31 - 3 hours; February 1 - 50 minutes; February 2 - 40 minutes; February 3 - 40 minutes; February 5 - 40 minutes; February 6 - 40 minutes; February 8 - 2 hours 30 minutes; February 9 - 30 minutes; February 10 - 40 minutes; February 11 - 2 hours 20 minutes; February 12 - 1 hour; February 13 - 50 minutes; February 15 - 30 minutes; February 16 - 30 minutes; February 17 - 30 minutes; February 18 - 30 minutes; February 19 - 30 minutes; February 20 - 30 minutes; February 22 - 8 hours 30 minutes; February 23 - 30 minutes; February 24 - 40 minutes; February 25 - 40 minutes; February 26 - 40 minutes; February 27 - 30 minutes; March 1 - 1 hour; March 2 - 1 hour; March 3 - 3 hours; March 4 - 30 minutes; March 5 - 40 minutes; March 6 - 40 minutes; March 8 - 30 minutes; March 9 - 30 minutes; March 10 - 30 minutes; March 11 - 50 minutes; March 12 - 40 minutes; March 13 - 30 minutes; March 15 - 30 minutes; March 16 - 40 minutes; March 17 - 40 minutes; March 18 - 30 minutes; March 19 - 40 minutes; March 22 - 30 minutes; March 23 - 30 minutes; March 24 - 40 minutes; March 25 - 1 hour; March 26 - 1 hour; March 27 - 1 hour; March 29 - 30 minutes; March 30 - 30 minutes; March 31 - 1 hour; April 1 - 40 minutes; April 2 - 40 minutes; April 3 - 40 minutes; April 5 - 1 hour; April 6 - 1 hour; April 7 - 1 hour; April 8 - 40 minutes; April 9 - 40 minutes; April 10 - 30 minutes; April 12 - 40 minutes; April 13 - 40 minutes; April 14 - 1 hour; April 15 - 40 minutes; April 16 - 1 hour; April 17 - 30 minutes; April 19 - 2 hours 40 minutes; April 20 - 40 minutes; April 21 - 2 hours 40 minutes; April 22 - 40 minutes; April 23 - 40 minutes; April 24 - 30 minutes; April 26 - 1 hour; April 27 - 50 minutes; April 28 - 30 minutes; April 29 - 1 hour; April 30 - 1 hour; May 1 - 50 minutes; May 4 - 50 minutes; May 5 - 2 hours; May 6 - 55 minutes; May 7 - 2 hours; May 8 - 2 hours 25 minutes; May 10 - 4 hours 30 minutes; May 11 - 1 hour; May 12 - 2 hours 35 minutes; May 13 -

40 minutes; May 14 - 40 minutes; May 15 - 50 minutes; May 17 - 40 minutes; May 18 - 40 minutes; May 19 - 8 hours 40 minutes; May 20 - 30 minutes; May 21 - 40 minutes; May 22 - 2 hours 10 minutes; May 24 - 50 minutes; May 25 - 50 minutes; May 26 - 40 minutes; May 27 - 50 minutes; May 28 - 2 hours 50 minutes; May 29 - 40 minutes; May 31 - 8 hours 30 minutes.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

In December of 1957, the monthly rated Agent's position at Mt. Pleasant, Iowa was by agreement reclassified to that of Agent-Operator. There has never been a position of Agent-Operator at Mt. Pleasant until December, 1957.

From the date reclassified to Agent-Operator in December of 1957, the occupant of the position at Mt. Pleasant was paid overtime for work performed in excess of eight hours per day, until June 1, 1964.

The position of Agent-Operator at Mt. Pleasant, Iowa is a 6-day monthly rated position with assigned hours 8:00 A. M. to 4:00 P. M., Monday through Saturday, with assigned rest day of Sunday.

On the dates and times listed in the Statement of Claim, the Claimants remained on duty outside of their regular assigned hours to perform one or more of the following duties:

1. Handle mail off passenger trains.
2. Sell tickets.
3. Check baggage.
4. Report trains.
5. Handle train orders.
6. Perform any other duties necessary at that time.

Claims were filed and handled in the usual manner up to and including the highest designated officer of the Carrier and have been denied.

Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 7. Exhibits 1 through 6 cover the claim of H. J. Earley, for the month of September, 1964 and is typical of the handling of the other claims on the property; therefore, the other correspondence will not be submitted as exhibits.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The position of Agent-Operator at Mt. Pleasant, Iowa, occupied by claimant, is a monthly rated position described in Section 3(b) of Rule 8 of the currently effective collective agreement. It has been a monthly rated position covering all services rendered since prior to 1938. It is carried in the wage scale at page 44 of the agreement. The position is assigned six days a week, with Sunday as rest day. The Union is claiming that the occupant of the position is entitled to payment for time worked in excess of 8 hours on a regularly assigned working day. The Car-

rier, on the other hand, contends that the only additional payment required over and above the monthly rate is that described in Rule 8, Section 3(b), namely, on rest days.

The schedule of rules agreement between the parties, effective May 1, 1953, and supplements and additions thereto, are by reference made a part of this submission.

OPINION OF BOARD: Claim is for payments at time and one-half for work performed by Claimants, occupants of a monthly rated Agent-Operator position, at Mt. Pleasant, on hours beyond their regular eight hours, but on their regular work days. Organization argues that Rule 5 controls the dispute. Organization also argues that, since the position of Agent-Operator at Mt. Pleasant did not exist until 1957, at which time the monthly rated Agent position there was changed by agreement to the Agent-Operator position here involved, no rule prior to September 1, 1949 (as may be referred to by Carrier through Rule 8, Section 3 (b)), has application to this dispute. Organization also argues that Carrier had a practice for a "number of years" of paying overtime to the involved position for work in excess of eight hours on regular work days.

Carrier contends no such overtime payments are due Claimants because the only payments over and above the monthly rate required are those described in Rule 8, Section 3(b) — for work on rest days. Carrier denies any practice of years of paying overtime to the involved position for work in excess of eight hours on regular work days; Carrier admits that it paid one of the Claimants such overtime from October, 1963, to the end of May, 1964 (the only period for which such payments were proved by Organization), but states that those payments were made in error and were stopped as soon as the error was discovered.

It is our opinion that the amount of practice proved in this case by the Organization is not determinative of the intention of the parties to the Agreement. The dispute must be resolved by reference to the Agreement itself. Rule 5 reads:

"RULE 5. OVERTIME - CALLS

(a) Except as otherwise provided in this agreement, time worked in excess of eight (8) hours on any day shall be considered overtime and paid for on the actual minute basis at time and one-half rate.

(b) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g-3) of Section 1 of Rule 8.

(c) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g-3) of Section 1 of Rule 8.

(d) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is not included under existing rules in computations leading to overtime.

(e) An employee notified or called to perform service or work not continuous with the regular work period shall be allowed a minimum of two (2) hours at overtime rate for two (2) hours, such excess time shall be paid for at the overtime rate on the minute basis. Each call to duty after being released shall be a separate call.

(f) An employee required to report for duty before his assigned starting time shall be paid two (2) hours at the overtime rate for two (2) hours' work or less and at the overtime rate thereafter on the minute basis for the time required to work in advance of his regular starting time.

(g) Employees shall not be required to suspend work during regular hours or to absorb overtime."

and Rule 8, Section 3 (b) reads:

"(b) Monthly Rated Employees.

Effective September 1, 1949, employees subject to the terms of this agreement who are paid monthly rates comprehending more than 208½ hours per month shall have their work reduced one day per week and the hours comprehended in their rates reduced by 34½ hours per month.

Such employees shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employees of the same craft or class on and after September 1, 1949, shall apply to service on such assigned rest day. Such employees may be used on the sixth day of the work week to the extent needed without additional compensation. If not worked on the sixth day or if worked less than a full day on such sixth day there shall be no reduction in compensation. Service by such employees on other than the assigned rest day shall be compensated for under the rules applicable to such positions prior to September 1, 1949.

The monthly rates payable to such employees effective September 1, 1949, shall be the rates in effect August 31, 1949 reduced by \$2.43 per month.

Thereafter, to determine the straight time hourly rate for such employees divide the monthly rate by the hours comprehended in such rate effective September 1, 1949. To determine the daily rate multiply the straight time hourly rate by eight.

Future wage adjustments, so long as such rates remain in effect on such basis, shall be made on the basis of the hours comprehended in the rate in effect on and after September 1, 1949.

Except as specifically provided in this Section 3 (b) the rules applicable prior to September 1, 1949, to the employees covered by said Section 3 (b) shall continue without change."

Rule 8, Section 3 (b), acts as an exception to Rule 5, and it is the specific rule governing, among other things, compensation for work of monthly rated employees on days other than their assigned rest days; that is, service on such days "shall be compensated for under the rules applicable to such positions prior to September 1, 1949." The fact that the position was changed from monthly rated Agent to monthly rated Agent-Operator subsequent to September 1, 1949, does not mean, as implied by Organization, that it is not covered by Rule 8, Section 3 (b).

It is not disputed that prior to September 1, 1949, the rules provided for no extra payment to monthly rated positions for work in excess of eight hours on their regular work days. Thus, we must deny 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October 1968.