Award No. 16997
Docket No. CL-17406

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6355) that:

(a) Carrier violated the Agreement at Andover-Appalachia, Virginia, when it required Messrs, Geisler, Reece, Sanders, Ramey, Quillen, Mercer, Robinette, Baker and McCoy, Yard Clerks, to work their one-hour lunch period and compensated them at the pro rata rate only, each day, for this service.

(b) Carrier shall now be required to compensate Messrs. Geisler, Reece, Sanders, Ramey, Quillen, Mercer, Robinette, Baker and McCoy for five hours' pay at the rate of time and one-half for each work week they were required to work in excess of forty straight time hours.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the Class or Craft of employes in which the claimants in this case hold positions and the Southern Railway Company.

Claimants are assigned as Yard Clerks at Andover-Appalachia, Virginia Yards; each claimant has an assignment covering nine hours each day with an assigned lunch period of one hour. Claimants were being required to work nine hours each day and were paid for nine hours at the straight time rate each day.

Division Chairman Mr. Von M. Saylor filed the initial claim in this case on March 30, 1966, for 60 days prior to date of claim, Employes' Exhibit A, wherein he stated:

"This is a claim in favor of Messrs. Geisler, Reese, Quillen, Sanders, Mercer, Ramey, Robinette, Baker, and McCoy, Yard Clerks

The case was discussed by the parties in conference on April 4, 1967, at which time the Director of Labor Relations reaffirmed his previous decision declining the claim.

The agreement between the parties effective October 1, 1938 and revised as of June 1, 1952 to include all rule revisions, certain amendments, interpretations and memoranda agreed to subsequent to October 1, 1938, includes the following:

"RULE 24.

BASIC DAY, HOURS OF SERVICE AND MEAL PERIOD

(Revised, effective October 1, 1938)

(a) Except as otherwise provided in this agreement, eight (8) consecutive hours, exclusive of meal period shall constitute a day's work.

* * * * *

(d) For employes assigned to service with meal period, such meal period shall be afforded between the ending of the fourth hour and the beginning of the seventh hour after starting work, except in individual or special cases when agreed upon by the employe and the employer. **If meal period is not afforded within this time limit and is worked, the meal period shall be paid for at the pro rata rate and twenty minutes within which to eat shall be afforded at the first opportunity without deduction in pay."**
(Emphasis ours.)

"RULE 27. OVERTIME

(Revised, effective September 1, 1949)

(a) **Except as otherwise provided in this agreement,** continuous time actually worked or held for work in excess of eight (8) hours, exclusive of meal period or relief, on any day, shall be paid for as overtime on actual minute basis at time and one-half rate."
(Emphasis ours.)

OPINION OF BOARD: Claimants had assignments covering nine hours each day with an assigned lunch period of one hour. They were required to work nine hours each day and were paid for nine hours at the straight time rate each day. They state that since in a given week of 5 days they worked 45 hours, they should be compensated for the 5 hours at the rate of time and a half in accordance with Rule 27(b) which is the standard overtime Rule.

Carrier avers that they paid Claimants for the ninth hour each day at the straight time rate and that this was in accord with the provisions of Rule 24(d) of the Agreement which reads:

"Rule 24(d) For employes assigned to service with meal period, such meal period shall be afforded between the ending of the fourth hour and the beginning of the seventh hour after starting work, except in individual or special cases when agreed upon by the em-

ploye and the employer. If meal period is not afforded within this time limit and is worked, the meal period shall be paid for at the pro rata rate and twenty minutes within which to eat shall be afforded at the first opportunity without deduction in pay."

As we view this case, the two rules cited by the opposing factions are not inconsistent one with the other. Rule 24(d) applies to situations where work is performed within the 40 hour limitation or the 8 hour per day limitation and prescribes the compensation to be paid when work is performed through the meal period.

Rule 27(b), the standard overtime rule, is clear, precise unambiguous and universally understood and accepted by all parties. Clearly, as in the instant situation, when one performs work in excess of 40 hours per week he will be paid at the time and a half rate. This is the controlling rule in this case and must be applied. Since Claimants have been paid for each additional hour at the straight time rate, the Organization is requesting an additional half hour at the straight time rate for each day worked, which is tantamount to time and a half. We will sustain the claim for an additional half hour at the straight time rate for each day worked on the grounds that Rule 27(b) was violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was violated.

AWARD

Claim sustained consonant with Opinion as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1969.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 16997
DOCKET NO. CL-17406 (Referee John J. McGovern)

Award No. 16997 is palpably erroneous and we dissent.

Rule 24(d), quoted in the Award, deals specifically with and dictates how employes must be paid for working their assigned meal periods. The Claimants

were paid what they were entitled to under that rule. It is axiomatic that special rules prevail over general rules (Awards 15785, 12632, 12408, among others), and under this principle no further allowance was due.

The only argument advanced by the Petitioner in the handling of the dispute on the property was that Rules 25 and 27(b) superseded the provisions of Rule 24(d). Such an unrealistic and ridiculous position ignores the fact that the entire Agreement, including Rules 24, 25 and 27, was revised as of June 1, 1952, and the parties made no change in Rule 24. Furthermore, Rules 25 and 27(b) had their origin in the Forty-Hour Week Agreement of March 19, 1949, and effective September 1, 1949. Rule 24(d) was a prior existing rule relating to meal periods and the Agreement of March 19, 1949, specifically provided in Section 3(s) of Article II:

"Existing rules relating to meal periods shall remain unchanged."

If the parties desired a revision of Rule 24(d), the proper course was the bargaining process and not by the distortion of other rules.

A proper consideration of the rules involved required that the claim be denied, and Award No. 16997 can have no interpretive or precedential value with respect to any other case or claim.

P. C. Carter
W. B. Jones
R. E. Black
G. L. Naylor
G. C. White

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 16997, DOCKET CL-17406

Award No. 16997 is right and proper and in accordance with the Rules Agreement between the parties.

The first two paragraphs of Paragraph (b), Rule 27, provide:

> "(b) Work in excess of forty straight time hours in any work week shall be paid for at one and one-half times the basic straight time hourly rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumlated under paragraph (g) of Rule 25.
>
> Employes worked on more than five days in a work week shall be paid one and one-half times the basic straight time hourly rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe 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) of Rule 25."

It is quite apparent the above-quoted rule is a special rule with two specific purposes, i.e.:

1. It puts a firm cap on the forty-hour work week by assessing time and one-half payment for all time in excess of forty hours, and;

2. It puts a firm cap on the five (5) day work week by assessing time and one-half payment for all work performed on days in excess of five (5).

C. E. Kief
Labor Member
4-2-69

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