



Award Number 17483

Docket Number CL-17153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION
EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6268) that:

1. Carrier violated the Clerks' Agreement at Chicago, Illinois, when it failed to properly compensate employee R. C. Klein for work performed on May 30, 1966, which was a holiday as well as one of his assigned rest days.
2. Carrier shall now be required to compensate employee R. C. Klein an additional eight (8) hours at the time-and-one-half rate of his Chauffeur Position No. 5315 for work performed on Monday, May 30, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carrier maintains the following Chauffeur Positions at Western Avenue, Chicago, Illinois in Seniority District No. 118: Chauffeur Positions Nos. 5313, 5314, 5315, 5316 and 5317. Positions 5313, 5314 and 5315 are 7-day positions; Position 5316 is a 6-day position; and Position 5317 is a 5-day position.

Position No. 5318 relieves Position 5316 on Saturday; Position No. 5315 on Sunday and Monday, and Position No. 5313 on Tuesday and Wednesday.

Position No. 5328 relieves Position No. 5314 on Sunday and Monday.

Employee R. C. Klein is the regular occupant of Chauffeur Position No. 5315 at Western Avenue, Chicago, Illinois in District No. 118. His assigned hours of service are 8 A.M. to 4 P.M., Tuesday through Saturday with Sunday and Monday rest days.

On Monday, May 30, 1966, which was one of his assigned rest days and also one of the recognized holidays, i.e., Decoration Day, employee Klein was called and used to fill Swing Position No. 5328 relieving Chauffeur Position 5314 from 4 P.M. to 12 Midnight. He was compensated for 8 hours at the Chauffeur's time-and-one-half rate for the service rendered on that day.

Claim by timeslip for an additional 8 hours payment was filed with District Material Manager on June 6, 1966 by employee Klein, copy attached as Employees' Exhibit "A".

ments in a manner never before done. Furthermore, this request for eight hours overtime in addition to the eight hours overtime already paid Claimant for this day, is a situation that is specifically covered by that part of Schedule Rule 32(e) of the current Clerks' Schedule which reads:

'* * * There shall be no overtime on overtime. * * *'

"In view thereof, and in view of the fact that there is no schedule rule and/or agreement to support the barred instant 'claim', I must necessarily advise you that it is respectfully declined in its entirety.

Yours very truly,

/s/ S. W. AMOUR

Vice President-Labor Relations"

(Emphasis ours)

A copy of Mr. Amour's letter of declination to Mr. Hopper under date of September 29, 1966 is attached hereto as Carrier's Exhibit "H".

(Exhibits Not Reproduced)

OPINION OF BOARD: This is a so-called rest day-holiday case, one in which Claimant, occupant of position number 5315 worked on his rest day, Monday, May 30, 1966, which was also a holiday. Pursuant to Rule 33-Service on Rest Day, he was paid eight hours at the rate of time and one-half. Pursuant to Rule 35-Sunday and Holiday Work, he submitted a claim on Carrier's form for an additional eight hours at "pay code 21" which is merely described on the form as "Holiday". On the back of the form written in longhand is the phrase, "As per schedule of Holiday and Birthday Clerks Agreement." Also on the form is a place for position number which Claimant filled with the number, 5315.

Initially, we must resolve two procedural questions arising from Claimant's use of this form.

Carrier first contends the claim is procedurally defective because it has been enlarged between the times it was presented to Carrier's first and last officer inasmuch as the claim presented for holiday pay to the first officer was for eight hours at straight time while the claim progressed to the highest officer was for eight hours at time and one-half rate. As previously stated the claim was submitted to the first officer on Carrier's form which reflects the claim as being for eight hours at the rate of "pay code 21" which the form describes as "Holiday." Rule 35-Sunday and Holiday Work states that work performed on holidays shall be paid for at the rate of time and one-half. Therefore, when the form embodying the claim was submitted to the first officer for eight hours pursuant to "pay code 21" described on the form as "Holiday" and containing the longhand phrase, "as per schedule of Holiday and Birthday Clerks Agreement." such claim would only reasonably be interpreted to be for eight hours at the holiday rate of time and one-half. Consequently, we find there was no enlargement of the claim between the times it was presented to Carrier's first and last Officers.

Carrier next contends the claim is procedurally defective because the form embodying it reflects Claimant's regular position number, 5315, instead

of the number of the position to which the work he performed and for which claim is made actually accrued. In this connection, Carrier argues that the form should have reflected position number, 5314. However, Carrier states in its submission that Claimant was called because the occupant of Swingman Position #5328 who on Mondays provides relief for position #5314 was absent because of illness. Thus, had Claimant used position number 5314, Carrier could then have argued that the work for which compensation is sought actually accrued to position number 5328 which lends credence to the Organization's position that due to accounting procedures Carrier had instructed its employees to use their own position numbers instead of the number of the position worked. Moreover, the fact that the first two officers handling this claim took no exception to the position number on the form nor were mislead by it is further support for Organization's position on this point.

Finally, upon a consideration of the merits of the claim, we find that it must be sustained in accordance with the previous holdings of this Division that a Claimant is entitled to two separate payments for work he performs on his rest day which is simultaneously a holiday where there are two separate rules governing rates of pay performed on rest days and holidays in the Agreement and no qualifying exceptions.

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.

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.