



Award Number 17744

Docket Number TE-17431

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, 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:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when it failed to properly compensate Mr. P. J. Laux, Relief Operator, Monmouth, Illinois, for Monday, September 5, 1966.
2. Carrier shall compensate P. J. Laux for eight (8) hours at the punitive rate of \$4.2642 per hour account working off his assigned hours and eight (8) hours at the punitive rate for working a legal holiday, for a total of \$68.23 less compensation already received for work performed that day.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when it failed to properly compensate Mr. P. J. Laux, Relief Operator, Monmouth, Illinois, for Thursday, November 24, 1966.
2. Carrier shall compensate Mr. Laux for sixteen (16) hours at the punitive rate of \$4.2642 per hour for a total of \$68.22 less compensation already received for work performed that day.

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.

CLAIM NO. 1

This claim arises out of Carrier's failure and refusal to properly compensate Claimant P. J. Laux, regularly assigned occupant of the relief operator position at Monmouth, Illinois, for service performed 8:00 A.M. to 4:00 P.M. on Monday, September 5, 1966, a legal holiday. The relief position to which Claimant is assigned works first trick on Saturday and Sunday, second trick on Monday, and third trick on Thursday and Friday, with assigned rest days of Tuesday and Wednesday.

On Monday, September 5, 1966, a legal holiday, Claimant worked on the first trick position from 8:00 A.M. to 4:00 P.M. Claimant's regularly assigned hours on Monday are 4:00 P.M. to 12:00 Midnight. Claim was filed for

eight (8) hours at the time and one-half rate for working outside his regular assigned hours and eight (8) hours at the time and one-half rate for working on the holiday.

CLAIM NO. 2

The facts in Claim No. 2 are the same as Claim No. 1 with the exception of the dates. In claim No. 2, Claimant worked the first trick position on Thursday, November 24, 1966, a legal holiday. Claimant's regularly assigned hours on Thursday are from 12:00 Midnight to 8:00 A.M. Claim was filed for eight (8) hours at the time and one-half rate for working outside his regular assigned hours and eight (8) hours at the time and one-half rate for working on the holiday.

Claims were handled in the usual manner, including a conference, up to and including the highest designated officer of the Carrier to handle claims and has been denied.

Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 14.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: Mr. P. J. Laux is the regular assigned Relief Operator at Monmouth, Illinois. His assigned work week is as follows: first operator on Saturday and Sunday, second operator on Monday and third operator on Thursday and Friday. On both claim dates, that is, September 5, 1966 and November 24, 1966, Mr. Laux did not work his regular assigned hours. Instead, he worked outside the hours of his regular assigned position. On both dates he worked eight hours on first trick from 8:00 A.M. to 4:00 P.M. This was the only service performed by Mr. Laux on both dates.

September 5 and November 24, 1966 were legal holidays, and both dates were assigned work days for Mr. Laux.

OPINION OF BOARD: On each of the claim dates, September 5, and November 24, 1966, Claimant Laux was required to work on a position other than his own, and during hours wholly outside the hours of his regularly assigned position. These two days were holidays, requiring special treatment under the pay rules of the agreement. The agreement also, in a separate special rule, provides premium pay for time required to be worked by a diverted employee outside the hours of his regular position.

For each of the two days in question Carrier paid the Claimant 8 hours at time and one-half rate, plus 8 hours at the pro rata rate. The latter payment clearly was in compliance with the rule requiring such payment when a holiday occurs on a work day of an employee's work week.

Employees contend that the 8 hours at time and one-half rate satisfied only one of the two rules providing such rate for work on holidays and outside a diverted employee's regular hours. They cite the line of Awards beginning with Award 10541 as support for the claim.

This precise issue was considered and decided by Award 12453, where the rules were essentially the same. In that Award the Board carefully distinguished this kind of a situation from that in Award 10541 and those that follow it. To that extent, the claims were denied.

Not finding Award 12453 to be palpably erroneous, we consider it to be of decisive precedential value, and, accordingly, the present claims will be denied.

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 not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1970.