



Award Number 17753

Docket Number TE-17150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven & Hartford Railroad Company, that:

1. Carrier violated the agreement between the parties when it refused to properly compensate John Machado, Junior for service performed as Agent at Route 128, Massachusetts on Sunday, March 20, 1966, a rest day of that position.
2. Carrier shall be required to compensate John Machado, Junior the difference between the amount paid and one and one-half times the rate of pay of the Agent, Route 128, Massachusetts for work done on March 20, 1966. (Railroad Docket 10421)

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the New York, New Haven & Hartford Railroad Company and this Union, dated September 1, 1949 as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

At the time this claim arose, the Claimant, John Machado, Junior was a regularly assigned relief employee, assigned to work as follows.

Sunday	--Agent, Sharon	6:25 A.M. to 2:25 P.M.
Monday	--Agent, Route 128	6:15 A.M. to 2:25 P.M.
Tuesday	--First trick Seekonk	8:00 A.M. to 4:00 P.M.
Wednesday	--Third trick Attleboro	11:00 P.M. to 7:00 A.M.
Thursday	--Third trick Attleboro	11:00 P.M. to 7:00 A.M.
Friday	--Rest Day	
Saturday	--Rest Day	

The Agency at Route 128 is a monthly rated position. The position is covered seven days per week, the regularly assigned Agent working 6 days per week, Monday through Saturday, and is regularly relieved by the Claimant on Sundays. This deviation from the 40 hour week is permitted under

ing on Monday, March 14, 1966. Accordingly, the claimant covered this six-day position Monday, March 14, 1966—Saturday, March 19, 1966, inclusive, in order to relieve the regular occupant of the monthly rated Route 128 position for vacation. As a matter of information, Mr. Machado covered in place of the agent at Route 128 on Sunday, March 13, 1966, as a part of his regular relief assignment.

On Friday, March 18, 1966, Mr. Machado was notified that he would be released from covering the position in question at the conclusion of his tour of duty on Saturday, March 19, 1966. As Mr. Smith, the occupant of the regular monthly rated position at Route 128, would resume duty on Monday, March 21, the claimant was instructed to return to his own position on Sunday, March 20, 1966.

The request is for an additional four hours' pay or, in other words, eight hours' pay at punitive rate for service performed on March 20, 1966.

Claim for the additional payment was initiated by District Chairman R. B. Hoxie in his claim to Superintendent J. A. Gregg dated April 22, 1966. Copy of this claim is attached as Carrier's Exhibit "A."

The appeal was denied by the Carrier's superintendent in his decision dated May 12, 1966. Copy of this decision is attached as Carrier's Exhibit "B."

The case was subsequently appealed to the undersigned, the highest designated officer on the property to handle such matters, under date of June 3, 1966. Copy of this appeal is attached as Carrier's Exhibit "C."

Final decision on the property was made to the late General Chairman J. W. Ellis under date of July 14, 1966. Copy of that decision is attached as Carrier's Exhibit "D."

Copy of the agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is by reference made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: The facts are not in dispute. Claimant is a regular assigned rest day relief employee who relieves other regular employees on their rest days. On Sundays his assignment requires him to relieve the monthly rated agent at "Route 128". His own regularly assigned rest days are Thursday and Friday. Beginning Monday, March 14, 1966 and extending through Saturday, March 19, the regular assigned employee at "Route 128" was granted a vacation. Claimant was instructed to work the "Route 128" position during this period instead of his regularly assigned schedule. Claimant also worked on Sunday, March 20, 1966 for which he claims one and one-half time premium pay.

Carrier refuses to pay this premium rate claiming that Claimant was released from covering for the vacationing agent at the conclusion of the tour of duty on Saturday, March 19, 1966 and returned to his own position on Sunday, March 20, 1966 which was a regular working day on his own assignment.

The parties hereto have entered into a Memorandum of Understanding dated July 27, 1962 which provides, in part, as follows:

"Regularly assigned employees may be used temporarily to relieve on a position of an employee who is assigned to vacation, if there is no qualified extra employees available. It is understood that such regularly assigned employee must agree to the transfer, and will revert to his or her regular position at any time a qualified extra employee becomes available to cover the vacation assignment.

"Regular employees shall, during the period of transfer, be paid as provided in Article 29 and will not suffer loss of compensation as a result of such service."

* * * * *

Also pertinent to this case is Article 29 of the Agreement which provides as follows:

"ARTICLE 29 RELIEF SERVICE BY REGULAR EMPLOYEES

"Regularly assigned employees will not be required to work at other than their regular positions, except in cases of emergency. When required to work temporarily at other than their regular positions, employees shall be paid at the higher rate of the two positions and in addition shall be allowed any actual necessary expenses incurred and straight time rate for time consumed in traveling and waiting enroute to and from such temporary assignment. In no event will the employee receive less pay than he would have received had he not been used in such emergency service."

The Memorandum of Understanding clearly provides that the Claimant did not revert to his regular position until a qualified extra employee became available. No such employee became available and therefore Claimant was working the rest day of the "Route 128" assignment. Additionally, Article 29 prohibits Claimant from receiving less pay on his temporary assignment than he would have received on his regular assignment.

Organization also cites Award 17602 (Gladden) which is a case with similar facts. That case cites Award 6970 (Carter) which held:

"It seems clear that an extra employee who works all five day of the work week of a regular assigned employee is entitled to the two rest days incidental to that work week, and, if he is required to work on the rest days thereof, he is entitled to be paid for the rest day work, namely, the time and one-half rate."

It is apparent from the authorities presented that Claimant was entitled to time and one-half pay as claimed.

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

Carrier violated the Agreement.

A W A R D

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 9th day of March 1970.