Award No. 18453
Docket No. CL-18853

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6795) that:

1. Carrier violated the Clerks' Agreement by failing and refusing to properly compensate Clerk W. C. Carden for work performed on May 26, 1969 and June 1, 1969.

2. Mr. W. C. Carden be paid an additional six (6) hours at the rate of time and one-half for May 26, 1969, and an additional five (5) hours at the rate of time and one-half for June 1, 1969.

EMPLOYES' STATEMENT OF FACTS: 1. Clerk W. C. Carden is assigned to the position of Yard Clerk (008), a seven (7) day position, Harlingen, Texas, with assigned rest days being Sunday and Monday of each work week.

2. Clerk W. C. Carden is relieved on both of his assigned rest days by the occupant of Swing Clerk (2112-R), Harlingen.

3. Due to an increase in business, the Carrier found it necessary to call Clerk Carden while off on his assigned rest days.

4. Clerk Carden performed service for the Carrier on three (3) consecutive assigned rest days as follows:

A—Monday, May 26, 1969, he performed service for two (2) hours and was allowed two (2) hours' pay at punitive rate.

B—Sunday, June 1, 1969, he performed service for three (3) hours and was allowed three (3) hours' pay at punitive rate.

C—Monday, June 2, 1969, he performed service for two (2) hours and was allowed two (2) hours' pay at punitive rate.

Monday. On Monday, May 26, 1969, Clerk Carden was called and performed two hours of service. On Sunday, June 1, he was called and performed three hours of service, and on Monday, June 2, he was called and performed two hours of service. Clerk Carden had not been called in this manner on preceding rest days.

In keeping with the proper application of Rule 43 (b), the employe is not entitled to eight hours' pay for a call on the rest day unless and until he is "called regularly," which by practice has been interpreted to mean called on three or more consecutive rest days. Clerk Carden had not been called on three consecutive rest days until June 2, 1969. He was paid eight hours for service on that date.

The claim for additional hours to make a total of eight for each rest day worked without merit and is respectfully declined.

Yours truly,

/s/ O. B. Sayers"

OPINION OF BOARD: This case involves the interpretation of Rule 43 of the Agreement between the parties.

"RULE 43 NOTIFIED OR CALLED

(a) Except as provided in Paragraph (b) of this rule, employes notified or called to perform work not continuous with, before or after the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on a minute basis.

(b) Employes who are called reguarly on Sundays and specified holidays shall be allowed a minimum of eight (8) hours at time and one-half rate."

It is agreed that when an employe is called on three or more consecutive rest days or specified holidays he is considered to be called regularly and entitled to be paid under Rule 43(b) above quoted.

The Claimant was called to perform work on three consecutive rest days. The position of the Carrier is that Claimant is entitled to payment at the rate set out in paragrph 43(b) only for the third rest day Claimant worked. Tht Claimant asserts tha alhough it was only on the third day that he qualified as being regularly called, paragraph 43(b) should be retroactive in application affording him compensation at the higher rate for all three days.

The record clearly indicates that it is an established practice on the property to compensate employes who are regularly called at the rate set out in 43(b) on a retroactive basis so that they are paid at that rate for the first two rest days they work while qualifying as "called regularly."

We will sustain 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 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of March 1971.

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