

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19598
Docket Number CL-19711

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Colorado and Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7078)
that:

1. Carrier violated and continues to violate the Current Clerks' Agreement, particularly Rule 34 paragraph (e) and the provisions of the National Holiday Agreement, when it assigned Messenger duties performed by the regular messenger, to be performed by Switch Clerks and others on Holidays and Messengers rest days, specifically Saturday and Sunday.

2. Carrier shall now be required to compensate J. Marisco, First Trick Messenger and Bobby Joe Esterbrook, Second Trick Messenger, their rate at time and one-half for Thanksgiving and Christmas Day, 1970 and New Year's Day 1971, in addition to all weekends therein, plus all holidays and weekends hereinafter until this violation is corrected.

OPINION OF BOARD: The Organization contends that Carrier utilized other than Messengers to perform messenger service on three specified holidays and on rest days, and seeks additional pay for the first and second shift regularly assigned Messengers for the specified holidays "in addition to all weekends therein, plus all holidays and weekends hereafter until this violation is corrected."

Messengers on first and second shifts are regularly assigned to work weeks of Monday through Friday. In a long line of Awards (see for example Awards 17844 and 18346) this Board has held that work on a holiday is governed by the "Work on Unassigned Days" rule (Rule 34(e)) and Decision No. 2 of the Forty Hour Week Committee, which reads in part:

"Where work is required to be performed on a holiday which is not a part of any assignment the regular employee shall be used."

Under the rules involved, if messenger service were required on the first or second shift on the holidays specified, the regular incumbents were entitled to be used. From our study of the record it is clear (and admitted by the Carrier) that some messenger work was required of clerks on the weekends and holidays in question. The record does not show that employees other than Messengers normally performed messenger work as a part of their regular assignments. Carrier's Exhibit "C" dated April 14, 1972, is not properly before the Board and may not be considered since it was not presented or raised during the handling on the property.

It is our determination that the Claimants were the "regular" employees under the rule. We will sustain the claim to the extent of allowing payment for a minimum call of two hours at punitive rate to each Claimant for each of the holidays specified in the Statement of Claim, such payment being in accord with Rule 35 of the Agreement. However, there is insufficient evidence in the record to justify finding a "continuing violation" as to other holidays or rest days. Therefore, we shall deny that part of the claim reading "in addition to all weekends therein, plus holidays and weekends hereinafter until this violation is corrected."

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

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. H. Killian
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.