

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20944  
Docket Number CL-20859

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Camas Prairie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7619) that:

1. Carrier violated the Clerks' Rules Agreement at Lewiston, Idaho when it worked a furloughed employee in excess of five (5) days or forty (40) hours and failed to compensate him at the overtime rate of pay for work performed on his rest days.

2. Carrier shall now be required to compensate Mr. Larry Sullivan for an additional four (4) hours at the pro rata rate for the service performed on each of the days May 1 and 2, 1973.

OPINION OF BOARD: Claimant was a furloughed Clerk; he was assigned, in accordance with the Agreement, to vacation vacancies as follows: on Thursday, April 26, 1973 through Monday, April 30th as Yard Clerk, 7 A.M. to 3 P.M.; on Tuesday, May 1st through Saturday, May 5th as Yard Clerk - Yard Office 3 P.M. to 11 P.M. The regular rest days of his first vacation relief assignment were Tuesday and Wednesday. The dispute involves the question of whether or not Claimant is entitled to overtime pay for Tuesday and Wednesday, May 1st and 2nd.

Rules cited by the parties which are most pertinent provide:

"Rule 29. WORK WEEK

\* \* \* \* \*

(h) Rest Days of Extra or Furloughed Employees: To the extent extra or furloughed men may be utilized under this agreement, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment.

(i) Beginning of Work Week: The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

"RULE 31. OVERTIME

\* \* \* \* \*

(b) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Rule 29(g).

(c) Employees worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Rule 29(g)."

An examination of the Rules above clearly indicates some unresolved conflicts which could be applied to the instant dispute. However, there have been numerous Awards dealing with the same issue, the most recent involving the same parties and Claimant: Award 20877. In that Award we held that Claimant did not revert to furloughed status until he had completed both the work days and the regular rest days of the assignment he had taken on. We relied on the language of Rule 29(h) in that Award and we must do so similarly herein. Although we believe it would be highly desirable for the parties to address themselves to the obvious problems and inconsistency in the Rules cited above at their earliest opportunity, we must reaffirm our reasoning in the earlier Award and sustain the Claim herein.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.