

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23483  
Docket Number CL-23924

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Akron, Canton & Youngstown Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9392) that:

1. Carrier violated the agreement between the parties when, on March 28, 1980, it refused to allow proper payment of eight (8) hours at time and one-half to Clerk K. L. Suter.

2. Carrier shall now pay Claimant the four (4) hours pay which was improperly withheld.

OPINION OF BOARD: Claimant, a furloughed employe, performed eight hours service in the position of Operator-Clerk at Carey, Ohio on Sunday, March 23, 1980. Sunday was not a regularly assigned day for that position. The Carrier paid the claimant wages for eight hours at the straight time rate. Previously, on Sunday, February 10, 1980, under similar circumstances, the Carrier paid claimant wages for eight hours at the overtime rate. The claimant now seeks four hours of wages contending he should have been paid at the overtime rate for the service he rendered on March 23, 1980.

We note initially that the Organization's statement of claim to this Board refers to alleged improper payment for March 28, 1980. The Carrier has argued for dismissal of the claim based on this purported procedural defect. However, this argument was not included in the Carrier's submission to this Board and, in any event, the misstated claim date was clearly the result of mere clerical inadvertence which did not prejudice the Carrier in any manner. Thus, the claim for additional pay for services claimant performed on March 23, 1980 has been properly presented to this Board.

The Organization relies on Rule 12 of the applicable agreement to support the claim. Rule 12 is a notice or call term and provides that employes called to perform work on a Sunday, which is not a part of any regular assignment, shall be allowed pay at the rate of time and one-half. The Carrier asserts that Rule 12 is irrelevant to this case by arguing that Rule 12 is intended to cover only regularly assigned employes. According to the Carrier, the rights of furloughed employes are controlled by Rule 41 which gives the Carrier some discretion in using furloughed employes for extra or relief work on regular positions. The Carrier contends that since Rule 12 applies only to regularly assigned employes, Rule 41 impliedly contemplates payment at the straight time rate.

To interpret the relationship between Rule 12 and Rule 41, we must give effect to the past conduct and actions of the parties. The record contains evidence that the Carrier paid this claimant at the premium rate for work he performed on a prior Sunday in a similar situation. At least as to this particular claimant, both parties construed the agreement to require the payment of the overtime rate when this claimant was called to fill an extra assignment on a Sunday. Therefore, we will sustain the claim for four hours at the straight time rate because this claimant should have been paid at the rate of time and one-half for the eight hours of service he performed on Sunday, March 23, 1980.

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 Employee involved in this dispute are respectively Carrier and Employee 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.

