NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24973
THIRD DIVISION Docket Number CL-24628

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9591) that:

CLAIM NO. 1: (Carrier file CG-15251)

(a) That the Carrier failed and refused to pay the proper remuneration for September 2, 1979, 4:00 PM to 12 Mid. to H. C. Jones, Jr., extra clerk working Pier Dispatcher position for H. D. Lanford on vacation, account his being ordered to hold-so into the Labor Day Holiday, on Monday, September 3, 1979, and

(b) That the Carrier should now compensate H. C. Jones, Jr. five (5 1/3) hours and twenty minutes at punitive rate of Pier Dispatcher, minus the one (1) hour punitive rate previously allowed, in accordance with Rule 34(c) and others of the Clerical Agreement.

CLAIM NO. 2: (Carrier file CG-15252)

(a) That the Carrier failed and refused to pay the proper remuneration for September 2, 1979, 4:00 PM to 12:00 Mid. to L. W. Acree, Pier Foreman and W. E. Howell, Tonnage Clerk, when Carrier notified them to hold-so into the Labor Day Holiday, September 3, 1979, and

(b) That Carrier should now pay L. W. Acree and W. E. Howell eight (8) hours at punitive rate on their respective positions minus what they were paid originally.

OPINION OF BOARD: The three claimants were required to continue working past their 4:00 P.M. to Midnight assigned hours in order to complete their assigned work. Each worked less than four hours after Midnight. The extended working time was performed on September 3, 1979, which was the designated Labor Day Holiday. All were compensated for the extended time at the punitive rate of time and one-half on the actual minute basis. That is the rate provided in paragraph (b) of Rule 34 for work performed at a time continuous with the employe's regular work period. The claims are for compensation at the punitive rate provided for time worked on holidays in paragraph (c) of Rule 34.

The entire Rule 34 provides as follows:

"(a) Employes notified or called to perform work, either before or after, but not continuous with their regular work period shall be allowed a minimum of three hours at pro rata rate for two hours' work or less and, if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis.

(b) Employes notified or called to perform work, either before or after, but continuous with their regular work period, shall be allowed time and one-half on the minute basis for such time worked.

(c) Employes notified or called to perform work on Sunday or a specified holiday will be allowed five hours and twenty minutes at the rate of time and one-half for four hours' work or less. Employes worked in excess of four hours will be allowed a minimum of eight hours at the rate of time and one-half."

The Organization supports the claims by what it sees as the clear language of paragraph (c). In the Carrier's view, (c) was intended to apply only when an employe is called out on a holiday to perform duty on a vacancy. Here, it says, the Claimants simply worked overtime continuous with their assigned hours of duty in order to complete work they began earlier on the day before the onset of the holiday. The Carrier asserts that its interpretation of (b) and (c) is "longstanding" and has been applied systemwide without objection from the Organization. In this, the Carrier refers specifically to the Organization's failure to progress to arbitration a claim similar to those now before us, decided on this property against another employe seven years earlier for reasons identical with those it has given in these particular instances.

Upon careful reading of the three paragraphs comprising Rule 34, the Board concludes that paragraph (c) alone governs the rate to be paid for that part of the work which the Claimants performed on the Labor Day holiday, September 3.

We note that each paragraph clearly evidences its own particular purpose. Each deals separately with each of the different circumstances under which work is required to be performed after assigned hours, and each provides a different applicable penalty. Paragraphs (a) and (b), in turn, separately cover non-continuous and continuous service. Neither of them makes any reference at all to such service on a specified holiday. That function is left entirely to paragraph (c), which covers only work performed on Sunday or a specified holiday, without any distinction as to whether or not the work is continuous with assigned hours or the employe has been called to fill a vacancy occurring on that kind of day.

It thus reasonably appears that the parties intended to compensate any work required to be performed on a holiday at the penalty rates specified in paragraph (c). The Carrier has not made a persuasive case for a different conclusion.

The Carrier's general view of (b), we believe, completely overlooks the presence and force of paragraph (c) appearing immediately below in the Rule. If paragraph (c) was actually meant to be restricted to the kind of situation the Carrier describes it is difficult to reasonably explain why the parties framed (c) as broadly as they did. This Board may not revise the parties' clear language. Furthermore, the Carrier has proferred no evidence to substantiate its assertion that it has applied its particular interpretation systemwide. Also, the fact that the Organization did not progress to arbitration the Carrier's decision made seven years earlier, is not alone sufficient to prove effective approval or acceptance by the Organization of the reasoning of that decision during those years. There may be any number of reasons why disallowed claims are not progressed to the arbitration stage.

Accordingly we find a violation of paragraph (c).

Claim No. 1 will be sustained. Claim No. 2, as changed by the Organization to request payment for five hours and twenty minutes less time already allowed on a minute basis instead of eight hours, will also be sustained.

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.

A W A R D

The claims are sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1984.