

Award No. 4677

Docket No. 4398

2-GTW-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 92, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Carman B. R. Frailey, Pontiac Repair Track, Pontiac, Michigan is entitled to be additionally compensated for eight (8) hours at the straight time rate, due to his not being allowed to return to his regular assignment on Saturday, December 23, 1961, after completing temporary assignment in the place of car inspector K. Black.

EMPLOYES' STATEMENT OF FACTS: Carman Frailey's assignment was on the repair track assigned to work Tuesday through Saturday, with Sunday and Monday as rest days. On December 16 Carman Frailey was instructed by Car Foreman R. E. Sherman to cover the vacation relief assignment of car inspector K. Black, who was taking one week of his scheduled vacation, effective Monday, December 18. Car Inspector K. Black was assigned to work Monday through Friday, with Saturday and Sunday as rest days. Carman Frailey covered that temporary assignment and sought to return to his regular assignment on Saturday, December 23, which was denied him.

The instant claim has been progressed to each official in their proper order as provided in Rule 29, to the highest officer of the carrier, as provided for in Rule 30, without satisfactory settlement.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted by the employes, that claimant Frailey should have been permitted to return to his regular assignment on December 23 after the completion of the temporary assignment on December 22. Rule 14, Bulletining and Filling of Vacancies, third paragraph states:

"Employes assigned to temporary vacancies or temporary positions will return to their former assignments on termination of such temporary vacancy or temporary position."

You will note the rule says, will, and will is mandatory and not permissive.

As evidenced by the foregoing data, it is the past practice at Pontiac, Michigan, for vacation relief employes to observe the rest days of the temporary vacancy they are assigned to fill, regardless of whether such rest days fall during or immediately following the days worked on such vacation vacancies.

In summary of the carrier's position in this dispute, it should be pointed out that the employes in their progression of this claim on the property have failed to support their contentions in this case by (1) the rules of the current Working Agreement, (2) by the past practice in effect at Pontiac, Michigan, or (3) by any Award of the National Railroad Adjustment Board.

The instant claim should be denied and carrier requests that this Board so award for the following reasons:

1. No violation of the current Working Agreement has occurred in the instant case.
2. Claimant B. R. Frailey was handled in accordance with the established past practice at Pontiac, Michigan, on December 23, 1961.

The instant dispute has been handled in the usual manner on the property and has been denied by the Vice President and General Manager, the highest office of the carrier designated to handle claims or grievances.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

1 The Claimant, Carman B. R. Frailey, was regularly assigned to work on the Repair Track Tuesday through Saturday at Carrier's facility at Pontiac, Michigan. The Claimant "was also assigned, through bid, as a vacation relief employe".

2 On December 16, 1961, Car Foreman R. E. Sherman instructed the Claimant to cover the vacation relief assignment of Car Inspector K. Black during the week beginning Monday, December 18, 1961. Car Inspector Black was regularly assigned to the East End Yard Car Inspector's position and worked Monday through Friday.

3 The Claimant worked Black's position from Monday through Friday, December 18 through the 22, 1961, and on Saturday, December 23, 1961, the Claimant sought to return to his own regular assignment but the Carrier denied him the right to do so.

4 The Carrier contends that the Claimant's temporary vacation relief assignment did not end until Monday, December 25, 1961, the date on which the regular incumbent was scheduled to return to work.

5 The Organization, on the other hand, contends that the Claimant "should have been allowed to return to his own assignment the first day after com-

pleting the temporary assignment, which was Saturday, December 23rd, in compliance with the third paragraph of Rule 14 * * *".

The Rules of the controlling Labor Agreement cited by the Parties are, in pertinent part, set forth below:

"RULE 1 — HOURS OF SERVICE

(i) Beginning of Work Week

The term 'work week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work.

(1) Overtime Provisions

Work in excess of 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 employe due to moving from one assignment to another * * *

Employes worked more than five 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 week, except where such work is performed by an employe due to moving from one assignment to another * * *"

"RULE 8 — DISTRIBUTION OF OVERTIME

When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time. Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

"RULE 14 — BULLETINING AND FILLING VACANCIES

Employes assigned to temporary vacancies or temporary positions will return to their former assignments on termination of such temporary vacancy or temporary position."

The Carrier claims that Rule 8, supra, is inapplicable because the Claimant was not laid off during his regular working hours. The Carrier further maintains that Rule 14, supra, does not support the Organization's position, because that rule does not specify when a temporary vacancy ends.

The Second Division Awards (1266, 1514, 2616, 4097 and 4477) offered by the Organization in support of its position are factually distinguishable from the present case.

In many prior awards of this and other Divisions (Second Division Awards 1804, 2505 and 2842 and Third Division Awards 5811, 6408 and 6976) the principle has been soundly established that when a regularly assigned employe is transferred to a temporary or relief vacancy, he assumes all the conditions of that position including the hours assigned, rate of pay and rest days. Accordingly, we must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.