Award No. 2593
Docket No. CL-2586

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate its agreement with the Brotherhood, when after it established, at the West End Avenue Freight Station, Detroit, Michigan, by Bulletin No. 19 of February 24, 1943, and assignment made thereto by Bulletin No. 19-A, of March 3, 1943, a position not necessary to continuous operation with assigned hours 8:00 A. M. to 5:00 P. M., meal period 11:00 A. M. to 12:00 noon, Monday through Friday (changed 1:00 P. M. to 2:00 P. M. on June 1, 1943), and assigned the occupant thereof to work a position necessary to continuous operation from 7:00 P. M. to 3:30 A. M., meal period 11:00 to 11:30 P. M., on Saturday, blanking the assignment of 8:00 A. M. to 5:00 P. M. on Saturday, and refused to compensate the employe:

(a) at time and one-half rate for an additional hour each day, Monday through Friday, account meal period assigned in violation of the agreement rules, and

(b) at time and one-half rate for eight (8) hours' service performed on the Saturday assignment outside the regular assigned hours, Monday through Friday, and

(c) at pro rata rate for each Saturday the employe was required to suspend work during the hours regularly assigned Monday through Friday.

(2) That the Carrier shall now be required to compensate employe, James J. Culnan, or any other occupant of the same position:

(a) at time and one-half rate for an additional hour each day, Monday through Friday, account meal period being assigned in violation of the agreement rules, effective as of March 15, 1943, continuing through to and including May 28, 1943, and

(b) at time and one-half rate for eight (8) hours' service performed on the Saturday assignment outside the regular assigned hours, Monday through Friday, effective as of March 20, 1943, and continuing until such time as the violation has been corrected, and

(c) at pro rata rate for eight (8) hours each Saturday the employe has been required to suspend work during the regular assigned hours Monday through Friday, effective as of March 20, 1943, and continuing until such time as the violation has been corrected.

An employe assigned as a relief clerk, whether for one or more tours of duty per week, is a relief clerk while so assigned subject to all the contractual provisions, understandings and practices applicable to relief clerks. Just because there happened to be only one tour of duty per week as relief clerk at Detroit station is no reason for waiving or setting aside the provisions applicable to relief clerks.

The Carrier firmly believes that all the provisions of the contract have been fully complied with and that this claim should be denied.

OPINION OF BOARD: Prior to March 3, 1943, there existed, at the carrier's West End Avenue freight station at Detroit, a six-day position of Trucker to which claimant Culnan was assigned. His hours were from 8:00 A. M. to 5:00 P. M., with an hour off for lunch—11:00 A. M. to 12:00 noon. This position was abolished March 3, 1943, and Culnan was reassigned to a sort of hybrid position. He continued to work as a Trucker five days a week —Monday through Friday. On Saturday his position as such was blanked and he was assigned that day to work relief on a position, necessary to continuous operation, with hours from 7:00 P. M. to 3:30 A. M. From our reading of the record we are satisfied that the so-called abolishment of the position of Trucker held by Culnan prior to March 3rd was not brought about by any diminution in the work attendant upon that position. On the contrary we think it is clear that the arrangement, effectuated by the carrier on March 3rd, was designed to avoid calling upon any members of the station force to work overtime. The effect of the arrangement is the escape by the carrier of the necessity for payment of overtime to Culnan for his work on the position "necessary to continuous operation." (For, of course, if he were working a regular assignment as Trucker on Saturday he would be entitled to time and one-half for working the relief position.) Whether or not the arrangement was intentionally designed by the carrier to bring about this result, it constituted a violation of Rules 47 and 58. See Award No. 139.

We think the arrangement was probably conceived by the carrier in the belief that it was warranted by the decision of this Board in Award No. 1635. As pointed out in Award No. 2591, just rendered, it was there held that employes holding "positions necessary to continuous operation" could recover straight time only for their Sunday work where they were relieved on their rest days by employes who were assigned under an arrangement identical to that in the instant case. There was a special agreement, however, permitting such an arrangement in that case. Here, there is none, and there is much force to the argument that, by implication, the decision in Award No. 1635 sanctions the arrangement made by the carrier in this case. However, the issue presented here was not directly involved in that dispute. So the question here is, whether claimant is properly assigned as a relief employe in contemplation of the exception to the Sunday and Holiday rule as construed by the decisions of this Board? In view of what was said in Award No. 596 we think the question must be answered in the negative. It was there said:

> "It is not always possible to relieve a continuous operation position by a regularly assigned relief position. It is obvious that this is possible only in multiples of six. For example, if at a particular operation there were seven continuous operation positions, six of these could be filled by a regular relief assignment, but there would be one over which would have to be relieved in some other manner, generally by a furloughed or extra man. If such furloughed or extra man relieves the seven day position on a week day he is, of course, entitled only to straight time rate and the regular incumbent would be entitled only to straight time rate for the Sunday work; but if the seven day position has Sunday as the off day and it is filled by an extra or furloughed man, he then is subject to the first section of the Sunday rule, that is, he is entitled to time and one-half for such work. This is so because he has nothing to do with the exception to the rule; he is in no sense regularly assigned and as before pointed out, this phrase relates to the regular incumbent and not to the extra man."

Plainly, under this interpretation of the rule, the claimant is not **regularly** assigned to relief work. The major part of his work is a week day assignment as Trucker. As to the relief work, on the position necessary to continuous operation, it seems to us he is in no different situation than if he were furloughed or on the extra board.

We conclude that the abolishment of the position of Trucker, held by claimant prior to March 3, 1943, was in violation of Rules 47 and 58 of the agreement. Claimant is, therefore, entitled to be compensated at straight time rate for the work he has been deprived of on Saturdays as a result of the arrangement effectuated by the carrier. He is not, for the reasons pointed out in Award No. 2591, entitled to time and one-half for work on the position "necessary for continuous operation" by reason of the difference in starting time on that position and the starting time on his regular week day assignment. Nor do we think a penalty should be imposed on the carrier by reason of assigning claimant to a lunch hour contrary to the provisions of Rule 40. That lunch hour had been assigned to the position held by claimant long prior to the effective date of the controlling agreement. And through inadvertance on the part of the carrier and acquiescence on the part of claimant was continued in effect until this controversy arose. As soon as the violation was called to the carrier's attention claimant was assigned a lunch hour in accordance with the provisions of Rule 40. Under the circumstances we decline to invoke a penalty against the carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 carrier violated the agreement.

AWARD

Claim denied as to Items 1 (a) and 1 (b), 2 (a) and 2 (b).

Claim sustained as to Items 1 (c) and 2 (c).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.