

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Mr. C. A. Dugan, Baggage Agent, Wilkes-Barre, Pa., shall be reimbursed for one day's pay at punitive rate account of using a Freight Handler (who held no rights on the Clerks' Roster) to cover his position on January 18, 1943.

EMPLOYES' STATEMENT OF FACTS: Mr. Dugan's regular assigned position is at Wilkes-Barre Baggage Room with hours of service 7:15 A. M. to 3:15 P. M. The day in question, January 18th, was Mr. Dugan's regular assigned day of rest. The regular assigned Relief Baggage Agent and Checker, who was assigned to relieve Mr. Dugan, was held in on this date to cover a position starting at 12:45 P. M., and a Freight Handler, who held no seniority on Group 1 roster, was used in place of Mr. Dugan, in violation of the existing Clerks' Agreement. The Freight Handler's assigned hours were 8:00 A. M. to 4:00 P. M.

Claim was duly filed by Dugan and the Committee and appealed in the regular manner up to the highest official designated by the Carrier to handle such Claims. The Case was concluded by letter from Vice-President and General Manager Gerard, June 2nd, 1943, refusing to pay the Claim.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date of March 1, 1939 from which the following rules are quoted:

Rule 1—Scope: "These rules shall govern the hours of service and working conditions of all the following employes, subject to the exceptions noted:

GROUP 1.

Baggage Room Employes are listed under Group 1.

GROUP 2.

Freight Handlers are listed under Group 2."

Rule 17—Absorbing Overtime: "Employes will not be required to suspend work during regular hours to absorb overtime."

POSITION OF CARRIER: Mr. Dugan bid in the position of Baggage Agent at Wilkes-Barre, which provided for six days a week, and there is no rule which gave him any right to work seven days. Ordinarily, a relief day would be covered by relief employe, but this man being engaged on another position, then it would fall to clerk on the extra list. However, there were no extra clerks available, so a Group 2 employe from the Freight House was used to fill the vacancy, which is in line with the practice at this station and at all points on the system. The Ticket Agent called upon the Crew Dispatcher for man to fill the vacancy, and was advised by the Crew Dispatcher, who happened to be the Assistant General Chairman of the Clerks, that there were no clerks available to fill the vacancy and to call upon the Freight Agent for a Group 2 man to fill the vacancy, which plan was carried out. It is a fact that in selecting a Group 2 man to fill the vacancy, the Freight Agent made a mistake in selecting a Group 2 man entitled to the place. This, however, did not in any way affect Mr. Dugan. He was not entitled to work his relief day, and it did not make any difference to him who was used to fill the position. Because the Freight Agent made a mistake in selecting the man gives Dugan no claim, although the man entitled to the position would have a claim, but none is made for him.

The Employes' Statement of Claim would seem to indicate that we had no right to use a freight handler (Group 2 employe) to fill this vacancy, although we have this full right which has been recognized by the Clerks at this station and all stations on the road, and is covered in the Clerks' Agreement by Rule 4 (c), which reads as follows:

"Group 2 employes required to perform service on Group 1 positions, shall be paid a minimum of four hours' pay at the higher rate for four hours or less, and if required to perform such service more than four hours, the higher rate shall apply for the full day."

There is no basis for this claim, and the rules of the Clerks' Agreement were not violated. Therefore, the claim should be denied.

OPINION OF BOARD: Claimant held a six day per week assignment as Baggage Agent on a regular seven day position. Monday was the claimant's day off and was part of the regular assignment of a Relief Baggage Agent. On Monday, January 18, 1943, the Relief Baggage Agent was held off his regular assignment for some reason not disclosed by the record and a Freight Handler was called to supply the existing vacancy. The positions of Baggage Agent and Relief Baggage Agent are classified as Group 1 employes and that of Freight Handler as a Group 2 employe under the scope rule of the Agreement, but this particular Freight Handler also held seniority rights in Group 1, which were junior, however, to those of the Baggage Agent.

The question before us is whether, under the agreement and the circumstances of the case, it was permissible for the carrier to call the Freight Handler to fill the position of Baggage Agent on the date named in the claim. The claimant says that it was not, for the following reasons: (1) Monday, January 18, 1942, was, in effect, the Baggage Agent's Sunday off, within the meaning of Rule 20, and, by the express terms of Rule 18, he was entitled to work overtime on that day, as a Sunday, in preference to any employe other than the Relief Baggage Agent, who was unavailable; (2) it was improper, under the rules protecting seniority, to call the Freight Handler, then working in a Group 2 position, inasmuch as the claimant, a Group 1 employe with seniority, was available for call; (3) granting that the Freight Handler had seniority in Group 1, he was not entitled to work in preference to the claimant whose seniority rights therein were superior.

The carrier disputes the above propositions. It says: (a) that the off day of an employe assigned to six days per week on a seven day position is intended to be utilized as a day of rest, and not as a means of demanding

an extra day's work at time and a half, except only in event no other competent employe coming within the scope of the Agreement is available; (b) that the Freight Handler's established seniority in Group 1 entitled him to fill the vacancy in preference to depriving Claimant of his day off; and (c) that Rule 4 (c) contemplates that a temporary vacancy in a Group 1 position may be filled by a Group 2 employe, in order to qualify him for advancement and promotion.

The petitioner relies principally upon Rules 18 and 20. The second paragraph of Rule 18 is as follows:

"In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays."

It will be noted that this rule is applicable to two distinct types of labor, namely, "extra time on Sundays and holidays" and "overtime before or after assigned hours." The applicability of said rule to this case depends upon whether either of said situations were here present. Monday, January 18, was not, of course, a Sunday or a holiday, though it was the claimant's regular day of rest; nor, in our opinion, was the work performed by the Freight Handler on that day done before or after the claimant's assigned hours, within the meaning of Rule 18. The claimant's last assigned hour prior to the period here involved ended at 3:15 P. M. on the 17th, and his next assigned hour was not due to begin until 7:15 A. M. on the 19th. If the claimant had worked on the position on the 18th his labor might have been regarded as extra or overtime from his personal point of view, but it was neither from the standpoint of the position since it was clearly within the regular assignment of the Relief Baggage Agent.

Rule 20 provides, generally, that work performed on Sundays and certain enumerated holidays shall be paid for at the rate of time and one-half,

". . . except that employes necessary to continuous operation of the carrier, and who are regularly assigned to such service, will be assigned one regular day off duty in seven, Sunday if possible, and if **required** to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half." (Our emphasis.)

This case comes within the above exception and the significant fact is that the claimant was not **required** to work on his regularly assigned off-duty day. The petitioner asserts, however, that under the precedents established by this Board the claimant had a right to **demand** that he be permitted to fill the temporary vacancy in the position regularly assigned to the Relief Baggage Agent. The rules do not so declare, in terms, and we find no authority for such a conclusion in prior awards. Award 2494 is typical of those relied upon by the petitioner. That case presented a problem with respect to Sunday work under a six-day per week position, not a temporary week-day vacancy on a relief employe's regular assignment to a continuous seven-day per week position.

It requires no brief to sustain the proposition that periodic days of rest are not only desirable for the well-being of the laborer but also promote efficiency from the employer's point of view. We believe that the parties had this in mind when they entered in the Agreement now before us and we conceive it to be our duty to recognize and sustain the sound public policy here involved. We hold, therefore, that the claimant was not entitled, as a matter of right, to fill the vacancy which occurred on January 18, 1942.

Finally, the petitioner says that Rule 18 was further violated because the temporary vacancy was not filled by an employe "regularly assigned to the class of work" for which service was required. It is true that this Board has

held that this rule "has reference to the particular class of work done by the individual employe, not the class of work done in a particular department, and requires the carrier to give preference in working overtime or in working extra time on Sundays and holidays to the employes regularly assigned to such work." Awards 1630 and 2388. As already pointed out, however, this case does not involve overtime or extra time; besides the Freight Handler, while a Group 2 employe, had seniority in Group 1, and Rule 4 (c) recognizes that, under some circumstances, Group 2 employes may be assigned to Group 1 positions. While this Board has repeatedly held that when an improper assignment has been made, compensation may be directed in favor of the employe adversely affected, (Awards 685, 1646 and 2282), the record before us falls short of disclosing an improper assignment. The claimant was ineligible; the Freight Handler was eligible, or might have been; and the only other eligible employe disclosed by the record was the displaced Relief Baggage Agent. No claim is asserted on his behalf; nor is there any showing as to the reasons that prompted the carrier to hold him off his regular assignment. We cannot assume, in the absence of some showing, that this was not justified.

This award is based upon the facts and circumstances of this particular case and is not intended to overrule previous awards.

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 there is no showing that the carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1944.