

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier (Terminal Railroad Association of St. Louis) be required to compensate M. F. Kramer one additional day's pay at the rate of time and one-half account of failure to call him to perform services on Sunday, October 3, 1943.

EMPLOYEES' STATEMENT OF FACTS: M. F. Kramer is the regular assigned occupant of a yard clerk position in the Wiggins East Side Seniority District with assigned hours of 3:00 P. M. to 11:00 P. M. daily Monday through Saturday with Sunday as the assigned day of rest. This position is a continuous operation position and Mr. Kramer is relieved on his day of rest by a swing man or an extra or furloughed man.

On Sunday, October 3, 1943, extra or furloughed yard clerk Bischof, was assigned to relieve Mr. Kramer on his day of rest. Sometime during the day Mr. Bischof notified Acting Chief Yard Clerk McAleenan that he would be unable to report for duty. There were no other extra or furloughed yard clerks available for call, and acting upon instructions previously received from Agent Stall, Mr. McAleenan did not call Mr. Kramer to work the vacancy neither did he double over any of the available clerks working on the first shift and whose tours of duty ended at 3:00 P. M. As a result of this action, this continuous operation position was blanked on Sunday, October 3.

In the Wiggins East Side Seniority District there are approximately 40 regular yard clerk positions—practically all of which are continuous operation positions and the occupants of which are relieved on their day of rest by a regular assigned swing or relief man. These positions are divided into multiples of six and a regular swing or relief position is established to cover each six positions to be relieved. However, due to lack of even multiples several of the positions are relieved by extra or furloughed unassigned yard clerks. The position held by Mr. Kramer is in the latter category.

POSITION OF EMPLOYEES:

AUTHORITIES IN SUPPORT OF POSITION.

There is in effect an agreement between the parties bearing the effective date of February 1, 1922, from which the following rules are quoted:

"Rule 1. Employees Affected. These rules govern the hours of service and working conditions of the following employees, subject to the exceptions noted in Rule 2:

EXHIBIT M

"That it has been the past practice for employes to alternate hours of assignment weekly and that this practice shall continue as set forth in Paragraph 1 of this agreement."

No such arrangement would be permissible under the standard rule.

The main point we are endeavoring to emphasize is that in the case of the railroads parties to Decision No. 1621, the U. S. Labor Board promulgated a rule and it is quite proper that they and subsequent Boards interpret and construe the language of the rule, whereas in our case we adopted a rule after agreeing with the committee as to its scope and purpose. Also, through mutual arrangement, we put into effect some practices which are in fact deviations from the letter of our rule and we hold that, having agreed upon the intent of the rule in advance, the committee cannot now, with propriety, insist upon a different or more favorable (to them) interpretation.

The correspondence exchanged with the Clerks' committee at the time our "day of rest" rule was adopted indicates conclusively that our rule and the Labor Board rule are two separate and distinct entities notwithstanding the use of the Labor Board language in a part of our rule. That correspondence is attached as Exhibits Nos. 14 to 20, both inclusive. Still further and more convincing proof about the many differences in our rules and the standard Labor Board rule is contained in letters shown as Exhibits Nos. 21 to 25, both inclusive.

OPINION OF BOARD: M. F. Kramer is the regularly assigned occupant of a yard clerk's position in the Wiggins East Side Seniority District with assigned hours of 3:00 P. M. to 11:00 P. M. daily, Monday through Saturday with Sunday as his assigned day of rest. This is a position necessary to the continuous operation of the Carrier with relief furnished regularly on the day of rest.

On Sunday, Oct. 3, 1943, Extra Yard Clerk Bishop was assigned to relieve Mr. Kramer on the Sunday in question but some time during the day before the beginning of the tour of duty, Bishop notified the Acting Chief Clerk that he would be unable to report for duty. There were no other extra or furloughed yard clerks available for call and, acting on instructions previously received from the agent in charge, Mr. Kramer was not called to work the vacancy and it was not filled. As result of this action this continuous operation position was blanked on Sunday, Oct. 3rd, 1943.

This Division has held on many occasions that a position necessary to the continuous service of the Carrier cannot be blanked on the day off of the regular incumbent. See Awards Nos. 594, 750 and 1635. It is the contention of the Carrier here that no men were available and that the Claimant was not available because it was his day of rest.

It is true that in Award 2618 this Division held that the Claimant there who stood in the same position as Claimant here was not entitled as a matter of right to fill the vacancy. The basis of that award was public policy and not based upon any rules in the Agreement between the Employes and the Carrier. We cannot agree with that award. The Carrier had no right to blank this position. Claimant, while it was his day of rest, was available. If he did not desire to work the job, and had refused it, in which case the Carrier would not then have been liable for failing to fill the position. The Carrier having failed to fill this position and the Claimant being available, an affirmative award is justified.

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 Employee involved in this dispute are respectively carrier and employe 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.