

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henry J. Tilford, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that Frank James, Bill and Interchange Clerk at Sacramento Freight Station be assigned one regular day off duty in seven, Sunday if possible, and that he be compensated at the rate of time and one-half for all such seventh days, and for holidays, required to work subsequent to November 1, 1942.

EMPLOYEES' STATEMENT OF FACTS: Frank James is regularly assigned to position of Bill and Interchange Clerk at Sacramento Freight Station. This position is considered necessary to continuous operation of the Railroad and is assigned to be filled on every day in the week.

James has not requested that he be allowed to work this assignment of Bill and Interchange Clerk continuously instead of being given one day off duty in seven.

Under date of November 1, 1942 James addressed a letter to Superintendent G. W. Curtis, requesting that he be assigned one regular day off duty in seven, Sunday if possible. On November 30, 1942 Superintendent Curtis declined James' request.

POSITION OF EMPLOYEES: There is in effect an agreement between the parties, bearing effective date of October 1, 1930, from which the following rule is cited:

"Rule 22. Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the Railroad and who are assigned regularly to such service shall 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 shall be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday shall be paid for at straight-time rate.

"When employees request in writing that they be allowed to work their assignments continuously instead of being given one day off in seven, or when it is impossible for the Railroad to provide relief on

had been available. One of the seven-day positions was an important Interline Ticket Clerk for whom it has been impossible to find relief in the clerical ranks at any time, although the present incumbent has been on the position for more than twenty-five years.

All of the employes throughout the history of this Railroad who occupied positions necessary to the continuous operation of the Railroad were paid at pro rata rate for each of the seven days and these positions were regarded as preferred, inasmuch as generally they were filled by employes with considerable seniority. All of the agreements prior to the now existing agreement, effective December 16, 1943, contemplated such handling. The National Agreement provided that time worked on Sundays and holidays "shall be paid for at the pro rata hourly rate when the entire number of hours constituting the regular week-day assignment are worked." Following the National Agreement, the first agreement executed between the Clerk's organization and Carrier was effective June 1, 1923 and contained provisions identical to those set forth in Rule 22 quoted in Carrier's Statement of Facts.

Carrier is confident that at all times the employes involved, as well as their representatives, desired to have the incumbents of seven-day positions compensated at pro rata rate of pay. As a matter of fact, at the time the schedule was revised, effective October 1, 1930, all employes holding such positions signified their desire to work their assignments continuously instead of being given one day off in seven.

Frank James was thoroughly familiar with this fact, for at all times employes assigned to the position of Bill & Interchange Clerk had been paid at pro rata rate of pay. This was not a new position for James when he made the exchange with England on September 9, 1942. He had previously held the position of Bill & Interchange Clerk for six and one-half years, i. e. from January 2, 1936 to April 30, 1942. The position had always been bulletined at pro rata rate of pay. When James gave up the position and bid in another job in the Superintendent's office in April, 1942 it was bulletined as follows:

"ALL CONCERNED:

Bids will be received in this office until 8:00 A. M., May 6, 1942, for the following positions:

BILL & INTERCHANGE CLERKS—

SACRAMENTO FREIGHT OFFICE—Hours 3:00 P. M. to 11:00 P. M. Rate of pay \$7.00 per day. Seven days assignment. Applicant must understand freight rates, local and interline billing and interchange work. Automobile required."

E. E. England was the successful bidder and was assigned to position May 6, 1942 and held same until the exchange with James on September 19, 1942.

Carrier contends that the claim of employes should be declined because under the second paragraph of Rule 22 payment at time and one-half is not required for the seventh day when it is impossible for the Railroad to provide relief. In the instance here involved it was impossible to provide relief.

OPINION OF BOARD: It is obvious from the Statement of Facts that Petitioner is entitled to the relief sought under the second paragraph of Rule 22 unless it was "impossible for the railroad to provide relief," or unless, under the principles of equity, Petitioner was estopped from applying for it by reason of the circumstances under which he acquired the position of Bill and Interchange Clerk. While Rule 40 relating to the exchange of positions and the retention of seniority rights is cited, it contains nothing which restricts Petitioner's right to the benefit of Rule 22.

In Award 2280 which involved, among other things, the construction of the paragraph of Rule 22 here in question, it was held that the burden of showing the impossibility of providing relief on continuous seven-day assignments was on the carrier. Here, as in that case, "On account of labor shortages, and for other reasons, it may have been difficult; or it may have been uneconomical; but these impediments do not establish impossibility."

The desirability from every standpoint of affording every worker at least one day's rest in seven, coupled with the fact that the full force of the word "impossible" is not modified by any limiting phrase contained in the rule dictates the necessity of according to it its literal import. The proper function of this Board is to interpret the rules agreed upon by the parties, and in the absence of extraordinary circumstances we are not justified in circumscribing their enforcement by declining to award penalties.

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 Employees involved in this dispute are respectively carrier and employees 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 as contended by the Petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of April, 1945.