

Award No. 3049

Docket No. CL-2930

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

Guy A. Thompson, Trustee

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When it failed and refused and continued to refuse to compensate regularly assigned Car Record Clerk Mr. J. A. Schiffman, rate \$6.96 per day, assigned hours, 8 A.M. to 12N; 1 P.M. to 5 P.M., six days per week, Monday through Saturday, assigned day of rest SUNDAY—Pool No. 1, Car Record Department, Superintendent's Office, St. Louis, at the rate of time and one-half for the day's work performed by him on Sunday, June 11, 1944, which was Clerk Schiffman's regularly assigned REST DAY and was the seventh consecutive day he worked, which failure was in violation of the "exception" contained in Sunday and Holiday Rule 26 of the current Clerk's Agreement:

2. While regularly assigned Car Record Clerk Mr. C. O. Nagle, rate \$6.96 per day, assigned hours, 8 A.M. to 12N; 1 P.M. to 5 P.M., six days per week, Tuesday through Sunday, Pool No. 1, assigned day of rest MONDAY, Car Record Department, Superintendent's Office, St. Louis, was on vacation, his position was blanked on

Tuesday, June 13
Wednesday, June 14
Thursday, June 15
Friday, June 16
Saturday, June 17
Sunday, June 18

Tuesday, June 20
Wednesday, June 21
Thursday, June 22
Friday, June 23
Saturday, June 24
Sunday, June 25

on each of the twelve vacation days, except that on Mondays, June 12th and June 19th, which was Clerk Nagle's regularly assigned day of rest, and on which days a relief clerk, namely, H. Byington, was filling the Relief Clerk position and worked Mr. Nagle's position as such, 8 A.M. to 12N; 1 P.M. to 5 P.M. on those days;

3. That Clerk J. A. Schiffman shall be paid the amount of difference in pro rata rate, \$6.96 and time and one-half time, \$10.44, or \$3.48, as a result of the Carrier's violation of Rule 26 of the Clerk's Agreement, and

4. That Miss Margie Duke, regularly assigned Car Record Clerk, Pool No. 1, hours 11 P.M. to 7 A.M., six days per week, Monday through Saturday,

Car Record Department, St. Louis, with regularly assigned day of rest Sunday, be paid for eight (8) hours at time and one-half time—\$1.3050 per hour, \$10.44 per day, for each of the days, June 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25, twelve days, or \$125.28, account Carrier blanking Clerk Nagle's position, which position was assigned within the category of "necessary to the continuous operation of the Carrier," per Rule 26.

EMPLOYEES' STATEMENT OF FACTS: Clerk J. A. Schiffman was on June 11, 1944 and subsequent thereto, during the period here involved, regularly assigned to position of Car Record Clerk, Car Record Department, Superintendent's Office, St. Louis, hours 8 AM to 12N; 1 PM to 5 PM, six days per week, Monday through Saturday, with a regularly assigned day of rest—one regular day off in seven, on Sunday, which Mr. Schiffman selected and was able to secure because of the fact that he was the senior clerk in Pool No. 1, with a seniority date on the roster of October 2, 1909.

Clerk C. O. Nagle with a seniority date listed on the roster as of September 1, 1917 was on June 11, 1944 and subsequent thereto, during the period here involved, regularly assigned to position of Car Record Clerk, Pool No. 1, Car Record Department, Superintendent's Office, St. Louis, hours 8 AM to 12N; 1 PM to 5 PM, six days per week, Tuesday through Sunday, with a regularly assigned day of rest, one regular day off duty in seven, on Monday.

There were and are six positions in the Car Record Department classified as Car Record Clerks, comprising Pool No. 1, to which pool there was and is afforded a regular relief clerk on an established Relief Clerk Position, namely, Mr. Byington (during the period involved) who was regularly filling the Relief Clerk position, relieving the six Car Record Clerks in Pool No. 1, on Thursday, Friday, Saturday, Sunday, Monday and Tuesday of each week, with a rest day, one regular day off duty in seven, of Wednesday.

Growing from the Carrier's repeated acts of blanking clerical positions in the Car Record Department, which the record of this case will disclose and which was in violation of the Agreement Rule 26, which positions the Chief Personnel Officer and the General Chairman had agreed would be considered coming within the category of positions "necessary to the continuous operation of the Carrier" under the provisions of the second part, or the "exception" contained in Rule 26, in connection with which understanding the Chief Personnel Officer in his letter of instructions to employing officers dated June 3, 1943, copy submitted and designated as Exhibit "A" said in part, page 2—

"Car Record Posters—in Superintendent's Office, St. Louis Terminal"

and on page 3—

"such jobs that are assigned seven days as being required in connection with the continuous operation of the carrier, must be worked seven days,"

the Terminal Chairman wrote to the Terminal Superintendent on May 31, 1944, copy submitted and designated as Exhibit "B" and called to his attention the irregularity and practices contrary to the provisions of Rule 26 involving blanking of such positions and requested that the condition be corrected and also requested a conference with the Superintendent, with the General Chairman present.

On June 6, 1944, the Terminal Chairman, Mr. J. J. Woods, and the General Chairman conferred with the Superintendent and his Assistant, Mr. Coots, in the Superintendent's Office, at which time the whole question of a proper application of the STANDARD SUNDAY AND HOLIDAY RULE was thoroughly discussed and it was emphasized to the Superintendent by the General Chairman that positions subject to the "exception" or second part of Rule 26—Sunday and Holiday Rule—those coming within the category of "necessary to the continuous operation of the Carrier," must be filled eight hours per day, seven days per week, and that a proper application of the

Again, on Page 74, the referee states that in an illustration cited by the carriers where they contended it was only necessary to fill a position during the days when relief is required, the carriers' contention was sound. Further stating:

"Or to put it another way: the carrier would not be obligated under the illustration to fill the job during the three days unless its failure to do so would place a burden, within the meaning of the second sentence of Article 6, upon those employes remaining on the job or upon the regular employe after his return from vacation."

Again, on Page 76, the referee dealt quite extensively with the "blanking of positions of employes while away on vacation." He therein reiterates what he had previously said, that to follow the Employes' contentions would amount in fact to a "make-work" proposition and therefore contrary to the spirit and intent of Article 6 of the Vacation Agreement.

The application of Article 12 of the Vacation Agreement is likewise, as heretofore stated, involved in this case. The article has heretofore been quoted and in connection therewith the Carrier wishes to direct attention to the referee's decision on this article as set forth on Pages 98 to 102 of the booklet that contains, among other things, the award of the referee in connection with the Vacation Agreement. On Page 98 of this booklet we find the following language of the referee:

"As the referee has stated elsewhere in this decision throughout the negotiations which led up to the vacation agreement, it was definitely understood by the parties that the vacation plan should not be administered independently of existing working rules, * * *."

The Carrier cited the rule supporting its position that it is not obliged under rules of the working agreement (July 1, 1943 agreement) to fill the position caused by Mr. Nagel's absence on vacation, and not being so obliged under the working rules, it (the Carrier) is specifically not obligated to do so in the application of articles of the Vacation Agreement.

The honoring of the claim filed by the Clerks' Organization in favor of Miss Duke would not only do violence to the application of rules of the working agreement between the Carrier and the Clerks' Organization dated July 1, 1943, but would be contrary in its entirety to articles of the Vacation Agreement.

Submitted is Carrier's Exhibit No. 4—list of all of the employes in this group working as car record clerks in the Car Record Division of the Superintendent's office, showing their names and seniority dates.

The Carrier feels that neither the rules of the working agreement with the Clerks' Organization effective July 1, 1943, nor the Vacation Agreement support the Employes' contentions and they should be properly denied by your Honorable Board.

OPINION OF BOARD: Claimant J. A. Schiffman was on June 11, 1944, regularly assigned to the position of Car Record Clerk with Sunday assigned as his one day off duty in seven. Clerk C. O. Nagle was on June 11, 1944, assigned to position of Car Record Clerk, in the same pool with Schiffman, his assignment likewise being for six days with Mondays assigned as his one day off duty in seven. Claim 1 is based on the fact that Schiffman on Sunday, June 11, 1944, his day off duty, worked Nagel's position to facilitate Nagel's vacation trip, which vacation period commenced on Tuesday, June 12, 1944. This was done with the knowledge and consent of the Carrier. It is urged that this constitutes a violation of Rule 26 of the current agreement entitling Schiffman to the time and one-half rate of pay. In

view of the fact that Carrier concedes that this constitutes a violation of the agreement and that the Organization has waived monetary reparation, as set forth in Claim 3 of this docket, we will give no further consideration to these two claims.

Claim 2 sets forth the fact that while Nagel was on vacation, his regular position being one necessary to the continuous operation of the Carrier, the Carrier blanked his position on the days specified in the claim. Claim 4 sets out that Margie Duke was a regularly assigned Car Record Clerk who was available to have been called to do this work, in addition to her regular assignment, at the overtime rate.

We think it constitutes a violation of Rule 26 of the current agreement to blank positions necessary to the operation of the Carrier. The rules governing such positions are set up on the theory that such positions must be worked seven days a week. It is a violation of the working agreement to blank them. Awards 2467, 2536, Interpretation No. 1 (Serial 55) and 2783.

Insofar as this record shows, Margie Duke, an available Car Record Clerk who could have performed the work after completing her regular assignment, should have been assigned the work. We are of the opinion, however, that her claim can be sustained at the pro rata rate only. While it is true that if she had performed the work as overtime her rate would have been time and one-half, the penalty rate for depriving an employee of work is the pro rata rate of the position. See Awards 2346, 2695, 2823 and 2859.

The Carrier urges that these claims are controlled by the National Vacation Agreement. The record does not show that the Vacation Agreement has become controlling over conflicting schedule rules. We are obliged to say that the language of the schedule agreement controls the disposition of these claims. Awards 3022, 2537, 2484 and 2340.

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 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 an affirmative award is authorized to the extent shown by the Opinion.

AWARD

Claims 1 and 2 sustained. Claim 4 sustained at the pro rata rate of the position.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.