

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY.
CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.;
SAN ANTONIO, UVALDE & GULF RR CO.; THE ORANGE &
NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN
RR CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA
& NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO
GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.;
SUGARLAND RY. CO.**

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

(a) The Carrier is violating the Clerks' Agreement at Baytown, Texas, by failing and refusing to pay the Relief Clerk at the rate of time and one-half for service performed on Wednesday, Also

(b) Claim that the Carrier now be required to pay the Relief Clerk the difference between the straight time rate and time and one-half rate retro-active to the date of violation began.

EMPLOYES' STATEMENT OF FACTS: On December 18, 1944, the Carrier issued Bulletin No. CD-120 advertising position of Relief Clerk. The position was assigned to work the following hours:

Thursday	12:01 a. m. to 8:00 a. m.
Friday	8:00 a. m. to 4:00 p. m.
Saturday	8:00 a. m. to 4:00 p. m.
Sunday	8:00 a. m. to 5:00 p. m.
Monday	4:00 p. m. to 12:00 midnight
Tuesday	Rest day
Wednesday	12:01 a. m. to 8:00 a. m.

The Relief Clerk's work day begins at 4:00 p. m. on Monday and continues for twenty-four hours thereafter, ending at 4:00 p. m. Tuesday, at which time the rest day begins.

signments, to do what the Employees are here contending should be done. To do so would defeat the intent and purpose of Rule 47 providing for the employment of relief clerks to relieve occupants of 7-day per week positions one day in seven. Under the Employees' contention a relief clerk could relieve but five employees. On the basis of the Employees' contention in the instant case the relief clerk would not be available to relieve the 12:01 a.m. to 8:00 a.m. position on Wednesday, for the reason that under their contention, as previously shown, his rest day would not start until 4:00 p.m. Tuesday and would continue until 4:00 p.m. Wednesday. Certainly it was not intended, when Rule 47 was awarded the Employees by the Arbitration Board, that any such restriction would be placed on the Carrier in the employment of relief clerks to comply with the provisions of Rule 47. The previously quoted testimony of the Employees' representatives in the Arbitration proceedings indicates no such intent.

For reasons hereinabove stated in is the position of the Carrier that the contention and claim of the Employees in the instant case, which is not supported by any rule in the Clerks' Agreement, is entirely without basis or merit and, therefore, the claim should be denied.

OPINION OF BOARD: On December 18, 1944, the Carrier bulletined a Relief Clerk position as follows: Sunday, 8:00 a.m. to 5:00 p.m.; Monday, 4:00 p.m. to 12:00 midnight; Tuesday, off day; Wednesday, 12:01 a.m. to 8:00 a.m.; Thursday, 12:01 a.m. to 8:00 a.m.; Friday, 8:00 a.m. to 4:00 p.m.; and Saturday, 8:00 a.m. to 4:00 p.m. It is the contention of the Organization that the Claimant's day commencing at 4:00 p.m. on Monday ended at 4:00 p.m. on Tuesday and that Claimant's day of rest, therefore, began on Tuesday at 4:00 p.m. and ended on Wednesday at 4:00 p.m. From this it is argued that the Carrier violated the Agreement in assigning Claimant to commence work at 12:01 a.m. on Wednesday and that Claimant is entitled to time and one-half for work performed from 12:01 a.m. to 8:00 a.m. on Wednesday as it is work performed on Claimant's rest day.

The question before us involves the assignment of a relief clerk who has been assigned to relieve on six regularly assigned positions with different starting times, they being seven-day positions necessary to the continuous operation of the Carrier. The claim before us, assuming its correctness, can be avoided on such a six-day relief assignment only when the six regular positions being relieved have the identical starting time on each day of the respective assignments. In such instances, the relief man is within the rules here contended for by the Organization when he is not required to work on his seventh day.

As we said in Award 3258, however, the very term "relief clerk" contemplates a clerk who will work a different assignment from day to day in order that each occupant of the regular positions relieved may have one day of rest each week. We, therefore, determined that a relief job was not a regular assignment within the meaning of the starting rule. We also determined in that case that where a relief clerk is required to work more than eight hours in twenty-four, he is entitled to compensation at time and one-half rate for all hours in excess of eight. We adhere to that rule whether the employe is regularly assigned, a relief man or an extra. The only possible exception to this rule was reserved by Award 3258 for future determination. We do not decide it here because there was no violation of that rule claimed in the instant case and the possible exception could not, therefore, have any application.

The difficulty arises here in the determination of the time in which the relief man's day of rest begins. We have adopted the general rule that it begins twenty-four hours from the commencement of the last assignment worked. Such a rule is in all respects proper and works no hardship where regular assignments with uniform starting times are involved. But we do not think such a rule is applicable to a relief man relieving six positions with irregular starting times for the reasons which are to follow.

In the first place it will be observed that the definitions of the word "day" as made by this Board vary with the circumstances and the rule involved. In Award 687, we said that "its meaning in a given situation must be determined in view of the circumstances of that situation." Subsequent awards have adhered to that general proposition. See Awards 1817, 2030, 2053 and 2346. For the purpose of determining overtime we have repeatedly said that a day commences at the beginning of the assignment and covers the subsequent twenty-four hours. It does not guarantee sixteen hours of rest following the completion of the regular assignment. It merely provides for compensation at the time and one-half rate for work performed in excess of eight hours during that period. If, for instance, eight hours overtime was worked immediately following the assigned eight-hour tour of duty, sixteen hours of rest on that day could not follow without increasing the hours of that day to thirty-two. No such result was contemplated. In other words, the day there defined is for the purpose of determining overtime and not of guaranteeing any prescribed rest period.

With respect to the rest day, it was contemplated that a rest day would consist of twenty-four consecutive hours and the elimination of the regular assignment commencing within the period. In determining that the twenty-four hours rest period should begin twenty-four hours subsequent to the beginning of the last regular assignment worked, it is evident that the Board had in mind the occupants of regular assignments and relief men who relieved on six positions with uniform starting assignments. It is clear that it was not intended that such definitions of a "day" were to apply literally to a relief man working relief on six positions having irregular starting times.

In support of this latter statement, we quote from the evidence adduced before the Arbitration Board that awarded Rule 47, of the current Agreement, upon which this claim is based. In answer to a question propounded on this very point, Mr. Ralph Speer, Special Representative of the Clerks' Organization, in urging the adoption of the rule said:

"At any point where six jobs exist which are necessary to the continuous operation of the Carrier, they can put on a relief man to relieve one of those jobs on each of six days, and it wouldn't cost them anything."

On cross-examination, in answer to a similar question, Mr. Speer said:

"I said, if you have six jobs to relieve, you can put on a relief man, and he can work each one of those six days, relieving one of the regular men, and there will be no penalty involved, because they will all be working six days a week only."

It is evident, therefore, that one of the major arguments placed before the Arbitration Board to induce the awarding of the rule, was the fact that it would cost the Carrier nothing in penalties or otherwise to put it into effect. This is positive and irrefutable evidence of what the parties intended the rule to mean. It is such evidence as requires us to integrate the intent of the rule thus expressed with the language of Award 687 to the effect that the "meaning (of the word 'day') in a given situation must be determined in view of the circumstances of that situation."

It is pointed out that Rule 47, here involved, is identical with the rule promulgated by the United States Railroad Labor Board in 1923 in so far as the parts applicable to the present case are concerned. It was interpreted by that Board to mean that a rest day was to be provided on seven day positions without the payment of punitive overtime. United States Railroad Labor Board Decision No. 1621. See, also, United States Railroad Labor Board Decision No. 3341. With a rule guaranteeing six days work each week in existence, the clash between that rule and the decision of the Railroad Labor Board becomes real. Since 1923, the interpretation of the Railroad Labor Board has been generally followed until the present case progressed to this Board. This administrative construction of the rule affords strong

evidence of the construction to be placed upon the present rule. The construction placed upon a rule by the parties themselves over a long period of time ordinarily affords a safe guide in its interpretation. The Organization argues that such interpretation cannot be made because a new and different rule has been subsequently negotiated which has the effect of wiping out all previous interpretations. It is true that the words "not necessarily Sunday" were substituted in the present rule for the words "Sunday if possible" in the old one. This change is not pertinent to the claim before us and can have no effect in the decision of this case. The controlling portions of the rule are identical with those in the old rule and require the application of the principle that the readoption of a rule in terms carries with it the interpretations and intendments of the old.

We come to the conclusion that where a relief clerk is assigned to relieve six regular positions with irregular starting times, that the usual definition of the word "day", as used in the clause "will be assigned one regular day off in seven", as used in Rule 47, must be modified in view of the circumstances here presented and the intendments of the parties when the rule was first inaugurated. We hold, therefore, that the rest day of such a relief clerk must be interpreted to mean the period of time between the termination of the assigned work period immediately prior to and the beginning of the assigned work period immediately following the assigned rest day with a minimum of 24 consecutive hours off duty intervening.

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 respective 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1947.