

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

H. Nathan Swaim, Referee

**PARTIES TO DISPUTE:**

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

**ATLANTIC COAST LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers and Station Employees:

1. That the carrier violated Rules 40 and 60 of the agreement effective November 16, 1944, Mediation agreement effective Feb. 1, 1945 and paragraph 3 of the Federal Manager of Government Controlled Railroads Notice and Order No. 1 dated May 17, 1946 by *refusing employment to employees enumerated in attached Exhibits A and B at Richmond, Va., on May 24 and 25, 1946.*

2. That employees enumerated in attached Exhibits A and B be paid the amounts shown opposite their names for the two days in question which was the time lost by each, account of these violations.

**EMPLOYEES' STATEMENT OF FACTS:** Rule 40 of agreement between the parties to this dispute reads as follows:

"Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shutdown by the employer nor a suspension of work by the employees."

Rule 60 of agreement reads as follows:

"Employees covered by Groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

Mediation agreement effective Feb. 1, 1945 reads as follows:

"Effective February 1, 1945, the following rule shall govern Group (3) employees covered by the current agreement between the Atlantic Coast Line Railroad Company and its clerical employees represented by the Brotherhood of Railway and Steamship Clerks,

Organization did not request any revision of, or change in, Rule 45 at the time the Mediation Agreement was negotiated. It follows that Rule 45 remained in effect, and was so intended, notwithstanding the provisions of the Mediation Agreement. The guaranteed work week for Group 3 employees is observed, but is subject to the existence of an emergency beyond the control of the carrier as covered by Rule 45. Therefore, the Mediation Agreement did not affect the release of Group 3 employees from service for the duration of the emergency caused by the strike.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claims presented in this Docket are for pay lost by the various claimants for the time they were not permitted to work on May 24 and 25, 1946, during the strike of the Locomotive Engineers and the Trainmen.

The Carrier contends that because of the strike there was no work for the claimants to perform; that this situation was brought about by conditions beyond the control of the Carrier; that the situation is covered by Rule 45 of the current Agreement which provides that "Employees required to report of work at regular starting time, and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held with a minimum of two (2) hours."; and that at most the Carrier should only be required to pay these claimants for two hours under Rule 45.

The employees, on the other hand, contend that this situation is covered by Rule 40 of the current Agreement entitled "Pending Decision," Rule 60 entitled "Basis of Pay," the Mediation Agreement effective February 1, 1945, and paragraph 3 of Federal Manager of Government Controlled Railroads Notice and Order No. 1 dated May 17, 1946.

Rule 40 provides that "Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shutdown by the employer nor a suspension of work by the employees." This rule clearly applies to grievances between the Clerks' Organization and the Carrier. It is not applicable to the situation here.

Nor are we impressed with the suggestion that the question here can be decided on the orders and instructions of the Federal Manager. This order was issued before the strike actually occurred and would seem to only require that the Carrier continue to operate under the rules and provisions of the current Agreement.

This leaves as a basis of the claims of the employees only Rule 60 of the current Agreement and the Mediation Agreement of February 1, 1945.

Both Rule 60 and Rule 45, in their present form, have been in current agreements between the Carrier and the Clerks' Organization since at least 1925. In some instances in the past the Carrier has treated the last paragraph of Rule 60, reading: "Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays," as being an absolute guaranty by the Carrier of a six day week for the employees covered by the Rule. When this was done Rule 45 was also included in the same agreement.

Several decisions of this Division and one decision of the United States Railroad Labor Board also seem to have interpreted the last paragraph of Rule 60, or a similar provision, as being an absolute guaranty of a six day week for such employees. U. S. R. R. L. B. Decision No. 3865, Award Nos. 79, 341, 735, 3661. Some of these decisions were in cases where, because of conditions beyond the control of the Carrier, there was no work for the employees to do, yet, apparently, the provisions of Rule 45 were not thought to apply.

In this particular case these employees were not "required to report for work at the regular starting time" but instead were notified not to report for work.

It has always been recognized in the law of contracts that parties could contract for performance and be bound thereby regardless of the difficult or even impossibility of performance. If this was not the intention it could have been covered by proper conditions or limitations.

The current Agreement between these parties became effective February 16, 1944. Prior to that date there had been decisions by this Board holding that the second paragraph of Rule 60 constituted an absolute guaranty of a six day week for the employees covered by the Rule. If the Carrier did not agree with this interpretation of the contract it should have insisted on a change of the Rule in the 1944 agreement.

The Carrier violated Rule 60 as claimed.

The Mediation Agreement effective February 1, 1945, expressly provides "Sixty (60) percent of the working force covered by Group 3 Rule 1 in each agency or office will be guaranteed six (6) days work per week, except that this number of work days may be reduced in a week in which holidays occur by the number of such holidays." This is an express guaranty of six days per week without condition or limitation except as therein expressed. Therefore the Group 3 claimants were also entitled to pay for the time lost on these two days.

**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 Rule 60 of the current Agreement as to Groups 1 and 2 employees and violated the Mediation Agreement effective February 1, 1945, as to the Group 3 claimants.

#### AWARD

The claims are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1947.