

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 violated the Agreement:

(1) When on September 14th and 15th 1946, it blanked the position of Stockman, third shift, Jefferson Avenue, and

(2) That Mr. Jacob Rockel, Stockman, second shift, Jefferson Avenue, be allowed eight (8) hours pay at time and one-half rate September 14 and 15, 1946, as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: The position involved is one necessary to the continuous operation of the railroad with Friday as the assigned day of rest, on which the Company gets the benefit of straight time for Sunday work under the exception contained in Rule 44. The regular incumbent of Third Shift Stockman position laid off Sept. 14 and 15, and Mr. Rockol, who ordinarily would be relieved by the third shift stockman, was specifically notified by the Foreman at Jefferson Avenue to leave on both nights after completing his regular tour of duty without waiting for his relief, and the position was not filled on both dates.

The Carrier's reason for not filling the position as stated by Mr. Wicks, Director of Personnel, in his letter October 7, 1946, was "The position involved in the current claim was not filled on September 14 and 15, as previously stated, because we did not have furloughed men to assign," and copy of that letter is attached as Employee's Exhibit "A", attention being directed to the last paragraph thereof.

POSITION OF EMPLOYEES: There is in effect an agreement between the parties, bearing effective date of April 1, 1945, from which the following rules or portions thereof are quoted:

RULE 17

When reducing forces seniority rights shall govern. Any reduction in force shall be bulletined at least three (3) days in advance of the effective date reduction is to be made and employees affected will be paid up to the end of that period. Bulletin will show the position or positions to be abolished and the names of the occupants thereof. Employees whose positions are abol-

At the time the claim was filed with the Purchasing Agent, September 20, 1946, the General Chairman contended the blanking of the position was in violation of Rule 44, commonly known as the Sunday and Holiday Rule. This rule is a compensation rule pure and simple, its sole purpose being to provide method of payment for service performed on Sundays, specified holidays, and relief days. It makes no reference and has no connection with filling temporary vacancies, the question in this dispute. No rule was mentioned in subsequent handling.

The Employees having cited no rule in their claim as having been violated, and having furnished no evidence that any portion of the agreement has been transgressed, the claim is without merit and should be denied the same as previous similar ones which have been before the Board.

Exhibits not reproduced.

OPINION OF BOARD: The Terminal Board claims the Carrier violated their Agreement on September 14 and 15, 1946 by blanking the position of Stockman, third shift, at Jefferson Avenue, and ask that Jacob Rockel, Stockman, second shift, Jefferson Avenue, be allowed eight hours' pay on each of said dates on an overtime basis.

The record discloses that the position of Stockman at Jefferson Avenue is a position in the class "necessary to the continuous operation of the Carrier" under the exception to Rule 44 of the parties' effective Agreement, with Friday as the regular relief day. On September 14 and 15, 1946, these dates being a Saturday and Sunday, the regular employee assigned to the third shift on this position laid off at his own request and his shift was not filled on those dates. The record discloses that there were no extra, or furloughed employees available to fill the position. The claimant, occupant of the second shift, was available. On both occasions, after completing his own shift, he was notified not to double over onto the third shift.

Rule 44 of the parties' Agreement is the regular Sunday and Holiday work rule. While there is a note added thereto it is not material here for the subject thereof has no application to the facts before us.

With reference to a like situation, we said, in Award No. 3049,

"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 this working agreement to blank them."

The holdings of this Board as to positions "necessary to the continuous operation of the Carrier" are that the position must be worked seven days a week and cannot be blanked in part. See Awards 594, 750, 1635, 2536 and 2783.

Insofar as this record shows claimant, Jacob Rockel, Stockman, second shift, was available and could have performed the work after completing his regular assignment and should have been assigned the work. See Award 3271.

We are, however, of the opinion that his claim should be sustained at the pro rata rate only. While it is true that if he had performed the work as overtime his rate would have been time and one-half, however, the penalty rate for depriving an employee of work is the pro rata rate of the position. See Awards 3049, 3193 and 3271.

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 employee 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 44 of the Agreement.

AWARD

Claim sustained on a pro rata basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.