

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**

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) When on March 4 and 5, 1946, it required Efficiency Clerk L. E. Schulte, regularly assigned six days each week, Monday through Saturday, to suspend work on his regular position to work position of Roundhouse Clerk necessary to continuous operation of the Carrier, the regular incumbent of which was absent on those dates, and

(2) That Roundhouse Clerk C. G. Torner be compensated additionally for 8 hours at time and one-half rate March 4 and 5, 1946, by reason of this violation.

EMPLOYES' STATEMENT OF FACTS: At Waterloo, Iowa, in the Mechanical Dept., there are, in addition to clerical forces in the Master Mechanic's Office and two Foremen's Offices, the following positions:

Efficiency Clerk \$8.90 per day—1st trick (6 day position) held by L. E. Schulte.

Roundhouse Clerk \$7.70 per day—1st trick (7 day position) held by Geo. Kerr.

Roundhouse Clerk \$7.70 per day—2nd trick (7 day position) held by C. G. Torner.

Roundhouse Clerk \$7.70 per day—3rd trick (7 day position) held by L. H. Perry.

A Relief Roundhouse Clerk relieves the three roundhouse clerks at Waterloo and three roundhouse clerks at Freeport on their seventh day.

On March 4 and 5, 1946, regular roundhouse clerk George Kerr laid off to go to Pella, Ia., to see about going to college there under the G. I. Bill of Rights. He later secured a leave of absence from his position for purpose of going to school under the said G. I. Bill of Rights in accordance with the Military Agreement in effect between the Illinois Central Railroad and our Brotherhood.

On the two dates in question, instead of filling the seven-day position made vacant by the absence of Geo. Kerr by an extra clerk or by doubling

OPINION OF BOARD: The System Committee claims the Carrier violated their agreement when, on March 4 and 5, 1946, it required Efficiency Clerk, L. E. Schulte, a six-day per week employe, to suspend work on his regular position and perform the work of a Roundhouse Clerk, a seven-day per week position and one necessary to the continuous operation of the Carrier. It also asks that Roundhouse Clerk C. G. Torner be compensated for each of said days on the basis of eight hours at time and one-half.

Rule 42 of the parties' agreement provides:

"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 above 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 employes necessary to the continuous operation of the carrier and who are regularly assigned to such service will 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 will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

The facts are not in dispute. Carrier maintains three positions of Roundhouse Clerk at Waterloo, Iowa, with round the clock service, which service is necessary to its continuous operation. The same is true at Freeport, Illinois. One regularly assigned relief roundhouse clerk relieves all six of these positions on their regular day off.

Geo. R. Kerr, the regularly assigned roundhouse clerk at Waterloo on the first trick, asked leave to be absent on March 4 and 5, 1946, and this request was granted. On these two days his position was filled by L. E. Schulte, a regularly assigned efficiency clerk at the Waterloo office having the same shift. His position was a six-day per week assignment and one not necessary to the continuous operation of the Carrier. During such assignment Schulte's regular position remained vacant. Claimant C. G. Torner was a roundhouse clerk at Waterloo and regularly assigned to the third trick. There were no extra or furloughed clerks available at the time to fill the temporary vacancy caused by Kerr's leave of absence.

Under this situation the first question that arises is can the Carrier fill a temporary vacancy in a regular seven-day position, that is, one necessary to its continuous operation, with an employe regularly assigned to a six day position, that is, a position not necessary to its continuous operation? We think the answer is that it cannot.

As we said in Award 336:

"Such a position (seven day) is entirely different from a six day position. The rule itself draws a distinction between service in continuous operation and service in non-continuous operation. * * * if seven day positions had been properly created, they couldn't fill them on their off days and handle them in connection with their own without holding two positions in different kinds of service, viz.: six and seven day service. It would therefore seem that they would have to be filled on the off days by extra or relief men to make the weekly cycle complete."

And, in the absence thereof, by employes assigned to such service and available, although on an overtime basis. Likewise, regularly assigned seven-day employes cannot be used to fill temporary vacancies in regular six-day positions. See Award 2282.

Carrier contends that regardless, because of seniority, the claimant is not entitled to be compensated. But, as said in Award 2282:

"No claim is filed on behalf of any other person and the allowance of this claim will preclude another claim for the same work."

Insofar as this record shows, claimant was available and could have performed the work after completing his regular assignment and is entitled to be compensated. See Awards 2282, 3271 and 3745.

We are, however, of the opinion that his claim should be sustained at the pro rata rate only. While it is true that if claimant had performed the work as overtime his rate would have been time and one-half, however, the penalty rate for depriving an employe of work is the pro rata rate of the position. See Awards 3049, 3193, 3271 and 3745.

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 rules 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 26th day of January, 1948.

DISSENT TO AWARD 3770—DOCKET CL-3808

This award holds that the Carrier may not use an employe regularly assigned to a six-day position (in the absence of extra, furloughed, or relief clerks) to fill a temporary vacancy of two days on a regularly assigned seven-day position, arriving at such conclusion without finding a violation of any particular rule or rules and but relying upon Opinions of two prior awards (Nos. 336 and 2282) as warrant for the conclusion.

By the Agreement, positions necessary to the continuous operation of the Carrier may be established on a seven-day per week basis, the occupants thereof being assigned one regular day off duty in seven. The occupant of the seven-day position here involved was afforded his regularly assigned day off by the regularly assigned relief clerk. In addition, he laid off two days of his own volition, and it was necessary for continuous operation that the position be filled on these two days. As neither the relief clerk nor any extra clerks were available, the Carrier used a regularly assigned occupant of a six-day position employed in the same seniority district and qualified, thus fulfilling its obligation under the Agreement both in respect to the seven-day

position necessary to continuous operation and in respect to this occupant of the six-day position.

There is no rule in the Agreement prohibiting that action, and there was no violation of the agreement in so doing.

Thorough analysis of Awards 336 and 2282, the only warrant offered for the decision in this case, does not support their use as precedent for either the conclusions or the award here rendered.

(s) C. P. Dugan
(s) C. C. Cook
(s) R. H. Allison
(s) A. H. Jones
(s) R. F. Ray