

Award No. 3771

Docket No. CL-3821

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

ILLINOIS CENTRAL RAILROAD COMPANY

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

STATEMENT OF CLAIM: (1) Is a position necessary to continuous operation of the railroad "blanked" when the occupant thereof voluntarily absents himself from his assignment for personal reasons and the duties thereof are performed by another employee?

(2) Has the carrier complied with the meaning and intent of the applicable rules when the occupant of a position necessary to the continuous operation of the railroad is absent voluntarily and is filled by an employee on the same shift occupying a six-day position at a higher rate and is paid such higher rate?

CARRIER'S STATEMENT OF FACTS: The existing agreement between the parties, effective June 23, 1922, revised September 1, 1927, contains 64 rules. Rule 42, thereof, reads:

"Sunday and Holiday Work.—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 employees 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." Rule 50 of the effective agreement between the parties reads:

"Preservation of Rates.—Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. Assisting higher rated employees due to temporary increase in volume of work, does not constitute a temporary or permanent assignment."

On March 4 and 5, 1946, first trick roundhouse clerk George Kerr, on a position necessary to the continuous operation of the railroad, requested and

Clerk, C. G. Torner for eight (8) hours pay at time and one half rate March 4 and 5, 1946, and that dispute is properly before your Board in Ex-parte submission filed by the organization pursuant to its notice May 24, 1947.

POSITION OF EMPLOYES: It is indeed unfortunate that management has seen fit to indulge in practices of this kind, the questions it has propounded not being properly representative of any dispute pending between the organization and the carrier.

The questions put before your Board by management are designed solely to confuse the issues involved in the claim of Roundhouse Clerk C. G. Torner now before your Honorable Board in a dispute brought by our Organization, and being purely hypothetical, we hold that such questions cannot be dealt with by your Honorable Board without doing violence to the Agreement.

The carrier can have no purpose in coming before this Board as it has done except wishful thinking on its part that your Board may deal with such hypothetical questions and thus destroy the effectiveness of the agreement and the award in the Torner case.

Should your Board attempt to deal with the questions raised by management, the answer to Question 1 must obviously be No, but that answer must be qualified to make it crystal clear that positions necessary to continuous operation will be considered the same as having been blanked in the application of agreement rules where the work is performed by employees not covered by the agreement or by employees covered by the agreement not properly entitled to perform such work.

Carrier's second question is more in point for it will be observed it there deals with employees in two different classes of service, those occupying positions necessary to the continuous operation of the railroad assigned seven days each week, and those occupying positions not necessary to continuous operation assigned six days each week with Sunday automatically the rest day.

In principle your Board in Awards 336 and 2282 held that employees occupying positions necessary to continuous operation and those occupying positions not necessary to continuous operation were separate and distinct, and that neither could do the work of the other to the detriment of the other, and the carrier is here seeking to have your Board undo that principle.

If the Board deals with the matter, the answer to the carrier's second question must obviously be that the carrier has not complied with the meaning and the intent of the agreement in any instances where it uses employees assigned to six days service to the detriment of those assigned to seven days service or vice versa.

As stated in our Statement of Facts, the two questions raised by carrier are not representative of any dispute pending or unadjusted between the parties but are purely hypothetical questions and there being no dispute before the Board as contemplated by Section 3 (i) of the Railway Labor Act, as amended, we respectfully request that carrier's submission be dismissed.

OPINION OF BOARD: The two questions here presented arise out of the same state of facts as are set forth in Award 3770 and will not be here repeated.

Award 3770 fully answers question two in the negative. As to question one, it is of course necessary that the position be filled during all vacancies. See Awards 594, 750, 1635, 2536, 2783 and 3645. As to the manner of filling we have answered that in Award 3770.

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 since Award 3770 decides the issue involved herein the case should be dismissed.

AWARD

Case dismissed.

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 3771, DOCKET CL-3821

For the reasons advanced in our dissent to Award 3770, we likewise dissent to this award.

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