

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) That the Carrier violated the Clerks' Agreement when on Friday, September 20, 1946, the position of Mr. J. W. Everett, Yard Clerk at Auburn, Washington, was blanked on his assigned day of rest and no one was placed on the position.

(2) That Carrier be required to compensate Mr. J. W. Everett for one additional day at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Mr. J. W. Everett is the regularly assigned occupant of a position of Yard Clerk in the Auburn Yard Office, Auburn, Washington, his assigned hours being from 8:00 A. M. to 4:00 P. M. daily, Saturday through Thursday, with Friday the assigned day of rest. This position is one necessary to the continuous operation of the Carrier, and Mr. Everett is relieved on his day of rest by a relief man or extra or furloughed man.

On Friday, September 20, 1946, there were no relief, extra or furloughed clerks available for call. Mr. Everett was not called to fill the vacancy, neither did they double over any of the available clerks working on the third shift, whose tour of duty ended at 7:00 or 8:00 A. M. As a result, this continuous operation position was blanked on Friday, September 20, 1946 and Mr. Everett was allowed and paid straight time rate for Sunday, September 22, 1946, in the amount of \$8.34 per day.

In the Auburn Yard there are approximately thirty-five regularly assigned clerical positions, practically all of which are considered necessary to the continuous operation of the carrier, and the occupants of these positions are relieved on their day of rest by a regularly assigned relief man. The positions are divided into multiples of six and a regular relief position is established to cover each six positions to be relieved. However, due to lack of even multiples, some of the positions are relieved by extra or furloughed unassigned clerks.

CARRIER'S STATEMENT OF FACTS: J. W. Everett occupies a position of Yard Clerk at Auburn with hours of assignment from 8:00 A. M. to 4:00 P. M., with Friday as his assigned rest day. On Friday, Mr. Everett's regular assigned rest day, service is performed on the position occupied by him by a relief employee.

set out their contention as to the correct application of the rule involved. That contention has been sustained by this Division. The Carrier and the Employees are bound by those decisions.

The inconsistency of the Employees' position in this case is illustrated in their Statement of Claim and Statement of Facts. They say that the Carrier violated the Clerks' Agreement when on Friday, September 20, 1946, the position in question was blanked on the assigned rest day of the position and no one was placed on it and they are claiming an additional day's pay at time and one-half. In their Statement of Facts they say that no available clerk was doubled over which, as the Carrier understands it, means that had some other clerk been doubled over, then there would be no basis for Mr. Everett's claim. This, of course, means that Mr. Everett personally had no claim to perform service on Friday, September 20. The Employees then say that as result of this Mr. Everett was allowed and paid straight time for Sunday, September 22. Just why the Employees refer to Sunday, September 22 and not Sunday, September 15, which was within the working week in which the position was not filled on the rest day, is not known, but this would be immaterial as under the circumstances whether the payment of time and one-half should be made for Sunday, September 15, or Sunday, September 22, is not material as there is no claim that this position was not filled on more than one rest day. The Employees themselves in their Statement of Facts contend that because straight time was paid for the Sunday within the working week that time and one-half should be paid for the rest day not worked. Such being the case, then under the principles enunciated in Awards Nos. 594 and 595 the proper payment should have been time and one-half for the Sunday and no time for the rest day.

The fallacy of the Employees' claim is further illustrated by the fact that there is no rule of the Clerks' Agreement entitling Mr. Everett to work on the rest day of his position.

The Carrier respectfully submits that the claim of Mr. Everett should be disposed of by allowing him payment at time and one-half rate instead of at pro rata rate for work performed on Sunday, September 15, 1946.

OPINION OF BOARD: This case comes to us upon a joint submission of the parties, and the facts are not in dispute.

Claimant occupies a position of Yard Clerk at Auburn, Washington. In such position he is an employee "Necessary to the continuous operation of the Carrier". He works Saturday through Thursday each week, with Friday as his day off. On the Friday in question no relief clerk was available for service, and instead of calling Claimant who was available, Carrier "blanked" the position.

Numerous awards of this Division have ruled that a Carrier may not blank a position necessary to continuous operation. However, Carrier is objecting to paying Claimant for the day the position was blanked at the penalty rate but is contending that when the position was not filled on the date in question it was thereby transformed from a so-called continuous service position to a non-continuous service position, so that Carrier is liable to Claimant only for the penalty rate for the Sunday which he worked previous to the date the position was not filled. It relies on Awards 594 and 595 which involved the same parties, and contends that such awards are controlling here.

But we do not find those awards are apposite in this case because the positions under consideration in those awards were held not to be continuous service positions. Therefore those awards allowed the penalty rate for Sunday work. In Award 2783 which sustained a claim for failure to permit the regular occupant to perform a day's service on the day the Carrier blanked a continuous operation position, we said: "This Division had held on many occasions that a position necessary to the continuous service of the Carrier cannot be blanked on the day off of the regular incumbent. See Awards 594, 750 and 1635."

Since Claimant was entitled to perform the service on the day the position was blanked, and since the regular rate due him under the agreement for that particular day, which was his relief day, was at the rate of time and one-half time, he is entitled to recover at that rate. In Award 3744 this Division again reaffirmed the principle: "The penalty rate for work lost because it was given to one not entitled to it under the agreement is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work," which principle had been heretofore announced in Awards 3277, 3371, and 3375. Had Claimant performed the work on the day in question, he would have received the time and one-half time rate.

Accordingly, the claim must be sustained at the time and one-half time rate.

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 agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of March, 1948.