

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COM-
PANY (JOSEPH B. FLEMING AND AARON COLNON, TRUS-
TEES)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railroad, that

M. W. Penland, Station Helper at Erick, Oklahoma, be paid the difference between straight time and time and one-half for work on Sundays, October 7, 14, 21 and 28; November 4, 11, 18 and 25; December 2, 9, 16, 23 and 30, 1945; January 6, 13, 20 and 27; February 3, 10, 17 and 24; March 3, 10, 17, 24 and 31; April 7, 14, 21 and 28; May 5, 12, 19 and 26; June 2, 9, 16, 23 and 30; July 7, 14, 21 and 28; August 4, 11, 18 and 25; September 1, 8, 15, 22 and 29; October 6, 13, 20 and 27; November 3 and 10, 1946.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence, an agreement between this carrier and the organization, bearing an effective date of August 2, 1945, except Rule 54, which is effective July 15, 1945. During the month of September, 1945, the carrier established a relief assignment under Rule 54 by placing six (6) positions to be relieved in one cycle, and for the benefit of the record, we quote location and title of these six (6) positions and the day of rest assigned to each employee or regular assignment:

Sayre	Ticket Clerk	Sunday
Erick	Station Helper	Monday
Sayre	Crew Clerk	Tuesday
Sayre	Crew Clerk	Wednesday
Elk City	Cashier	Friday
Clinton Junction	Interchange Clerk	Saturday

At no time did the Carrier issue a bulletin covering these six (6) positions, which indicates no attempt was made to fill the complete relief cycle.

See Exhibit No. 1, Division Chairman's letter to the Superintendent, dated September 20, 1945.

See Exhibit No. 2, General Chairman's letter to Division Chairman, September 25, 1945.

after six consecutive days of work for one day of rest, the Carrier made every effort to employ additional employees to relieve the employees on their rest day. As has been previously stated, that was done in this case. Irrespective of the Organization's position now, they cannot disprove the Carrier's good-faith intentions in trying in this instance, as it did in other relief assignments on other operating divisions, to arrange a relief assignment comprising six positions which would have included the Station Helper's position at Erick.

When the Memorandum of Agreement dated August 13, 1945 was concluded, it was mutually recognized and understood that there might be some "continuous operation" positions which possibly could not be included in relief assignments. Provision was therefore made in item three of that agreement as to the manner in which such positions should be relieved. Keeping in mind the importance of relieving the employee on his rest day, it was stipulated relief could be arranged by

One—Employees on Extra Boards where such Boards were maintained.

Two—Furloughed employees.

Three—Employment of additional employees.

There was no discussion whatever at the time of making the agreement of August 13, 1945 that if an employee was not included in a full six-position relief assignment, he must have Sunday as his rest day. Nor is such a provision to be found in the agreement of August 13, 1945.

Manifestly the employees cannot be sustained in a claim that we had no right to comply with not only the fundamental purpose of the rule, but the wish of the employee also. Inasmuch as the Carrier's good intentions to arrange and fill the relief assignment, including the position at Erick, could not be carried out because of insufficient personnel, surely Petitioner cannot deny the right of the Carrier to relieve the Claimant as was done under item three.

Nothing in the Memorandum of Agreement of August 13, 1945 nor Rule 54 commands or makes it mandatory that the Carrier relieve the Claimant on Sunday. Nor does the history of labor relations on American railroads and the decisions of the U. S. Railroad Labor Board support any conclusion that Rule 54 makes it obligatory on the Carrier to assign any employee holding a continuous operation position Sunday as a rest day. It was possible to relieve the Claimant on Mondays. The paramount consideration and basic principle of the rule is that employees shall be relieved if at all possible on their rest day. The end sought, relief of the employee on his rest day, was superior to the means of effecting the relief. This undoubtedly was also the reasoning followed by the Board which handed down the 1621 rule. The important consideration was to provide personnel whereby the employees would be relieved on their rest days.

For a history of handling in connection with U. S. Railroad Labor Board Decision 1621, also the events culminating in Rule 54 becoming effective, see Carrier's submissions in Docket CL-3616.

When there is no provision in the rule making it mandatory to assign Sunday as the Claimant's rest day, we think the following question is pertinent: Why should he be paid time and one-half for Sundays during the period of the claim when he requested relief on Mondays?

It is hereby affirmed that all data herein contained is known to the employee's representative and is hereby made a part of this dispute.

We respectfully petition this Board to deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: M. W. Penland was regularly assigned as Station Helper at Erick, Oklahoma, on a position necessary to the continuous opera-

tion of the Carrier. His assigned day of rest was Monday. On his relief days for the period covered by the claim his position was filled by a Mrs. Henry. Apparently those days were the ones following the days named in the claim since the days named are Sundays and his relief day was Monday. Mrs. Henry was not an employe regularly assigned to the relief of the position and there was no other regularly assigned or extra relief.

The gist of the claim is that there having been no regularly assigned or extra relief for the position and it having been a position necessary to the continuous operation of the Carrier, he was entitled to have Sunday designated as his relief day and was entitled to compensation at the rate of time and one-half for work on that day under the Sunday and Holiday Rule whereas he was paid only the pro rata rate.

In order to avoid confusion in relation to the true subject matter of the claim it appears appropriate to say at this point that this is not a claim for work denied because Mrs. Henry was allowed improperly to occupy the position in relief of Penland.

The Sunday and Holiday Rule became effective between the parties July 15, 1945. It is the so-called standard rule and will not be quoted herein. The particular provision of the Rule which it is claimed was violated is that which requires that in positions necessary for continuous operation of the Carrier the assigned day off duty shall be Sunday if possible.

On August 13, 1945 a Memorandum of Agreement was entered into between the parties, the obvious purpose of which was to implement for situations such as the one presented here and others the Sunday and Holiday Rule.

An application of the Sunday and Holiday Rule and the following from the Memorandum of Agreement to the facts disclosed by this docket appears to furnish a proper determination upon this claim:

"It is agreed in the application of Rule 54 of the agreement dated at Chicago, August 2, 1945, relief programs will be arranged and agreed to between the Division Superintendents and Division Chairmen. In principle the relief shall be arranged in the following manner:

1. A bulletin will be issued to each holder of a seven day assigned monthly rated position giving that employe an opportunity to designate seven different choices of relief days in the order of his or her preference. The employing officers and the Division Chairmen will cooperate in assigning relief days giving consideration to the requirements of service and the preference of senior employes.

2. Where six (6) positions are to be relieved, a position of relief clerk will be advertised, specifying the day of the week on which each of the six (6) positions will be relieved, the rate of pay on each position to be relieved and the assigned day off duty of the relief clerk.

* * * *

5. When relief days have been initially assigned they will thereupon become and thereafter remain the days of relief for the positions and the holders of the positions at that time or those who may thereafter become the holders of the positions will be governed by the thus designated relief day."

Rule 54 referred to in the Memorandum of Agreement is the Sunday and Holiday Rule.

It will be observed that this Memorandum of Agreement prescribes the method of application of Rule 54 to the instant situation. It not only contains positive directives, but also limitations upon rights under the rule.

First, it provides that relief programs shall be arranged and agreed to between the Division Superintendents and Division Chairman. It appears that the relief program here was arrived at in this manner and that under it, Penland was assigned Monday as his day of rest.

Second, it will be presumed that in agreeing upon this program and this assignment to Penland of Monday as his day of rest, that the Superintendent and the Chairman cooperated and gave consideration to the requirements of the service and the preference of senior employees.

Third, after the relief day of a position became initially assigned by accord between the Superintendent and the Chairman, it became fixed for the position and binding upon the holder and subsequent holders.

Fourth, none of this is altered by the fact that no relief position was bulletined or established at the time the relief day was assigned. The terms of the Memorandum of Agreement indicate that there could be no assigned relief until after the rest days were assigned since it required that bulletin for relief should specify the day of relief for each of the positions that were to be relieved and also the relief day of the relief clerk and the rate of pay of each position. Therefore, the relief days of the positions to be relieved became fixed and static at the time they were assigned.

It appears therefore that the Carrier could not after the original assignment to Penland of Monday as his rest day, in the absence of mutual agreement, have assigned to him any day as his rest day except Monday without violating Rule 54 as implemented by the Memorandum of Agreement referred to.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1948.