

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY & DEPOT 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 Ogden Union Railway and Depot Company violated the terms of the existing agreement to wit:

(a) By failing or refusing to fill all regularly established positions which the Depot Company considers as necessary to the continuous operation of the Carrier, and on which positions the Depot Company gets the benefit of straight time rate for all Sundays in the year; and

(b) The Company shall now compensate Mr. William Turner for one day's pay at the rate of time and one-half his regularly assigned rate for failure to call him on Monday, September 16, 1946.

EMPLOYEES' STATEMENT OF FACTS: There were four vacancies known by the Baggage Agent on date of September 15, 1946 to exist on the morning shift of September 16, 1946. These being positions of Messrs. Long and Barohlo who were off on vacation, and two vacancies existing by reason of Messrs. Wells and LaFreniere bidding out of the baggage department and had actually been placed on the new positions. At 11:00 P. M. September 15, 1946 Mr. Lewie Newcomb telephoned the office of the Baggage Agent giving notice of being ill and unable to protect his assignment at 5:30 A. M. September 16, 1946, this making the fifth vacancy on the morning shift in that department.

All positions are seven day positions on which the Carrier gets the benefit of straight-time work for all Sundays of the year, thusly being considered necessary to continuous operation each incumbent is assigned six days' work and a regularly assigned day of rest—and each position has a regularly assigned relief employee who relieves that position on the same regular day of every week.

Management allege all positions were filled on date of September 16, 1946 including the position left vacant by Mr. Lewie Newcomb, whom they allege one Mr. Dale Moore filled his position. However, management later acknowledges Mr. Dale Moore's position was left unfilled (See Employees' Exhibit C), Mr. Moore's position being the one for which instant claim is filed.

Mr. D. E. Turner, regularly assigned baggage handler in the baggage department, with Monday as his day of rest, filed claim for 8 hours' pay for

"The question to be determined in this case is whether the obligation of the Carrier under Rule 43 of the current Agreement to fill a position necessary to the continuous operation of the Carrier seven days each week when it is possible to do so, requires that a regularly assigned employee be given the work at punitive pay on his day of rest when relief and extra employees are not available."

This quotation has reference to the following provision of the applicable agreement, Rule 43:

"The Company will identify or designate all positions necessary to the continuous operation of the railroad and will post such information on the bulletin board. Positions necessary to continuous operation will be filled seven days each week, including weeks in which holidays occur, when it is possible for the Carrier to do so."

It is, therefore, apparent from the contentions of Chairman Murdock in his letter of October 28, 1946, Carrier's Exhibit A, and letter of January 14, 1947, Carrier's Exhibit C, that he has pursued the claim in the instant case on the assumption that the provision of Rule 43 of the Kansas City Terminal Railway Company agreement quoted above is in effect for the employees of The Ogden Union Railway and Depot Company by reason of the action of the Third Division in its Award 2980, but he has shown by his letter of January 14, 1947, Carrier's Exhibit C, that insofar as provisions of existing agreement are concerned, he relies upon the provisions of Rules 9, 46 and 56 of the current OUR&D Company agreement to support his claim in this case, and none of those rules contain the Kansas City Terminal rule which the Third Division applied in its Award 2980.

As we have stated in the application of the provisions of the agreement between this carrier and the brotherhood, if there had been an extra man available, he would have been used or have been paid for the shift in question. There was no extra man available for the reason that the extra board of clerks was abolished sometime previously at the insistence of General Chairman Murdock. Under our rules, we have dealt with the subject of unfilled vacancies on seven-day assignments, and have agreed that in the event one of the shifts is not filled and the incumbent is required by reason thereof to work Sunday, even though that is one of six days of work, he will be paid time and one-half. In evidence we attach copy of agreement of March 18, 1946, Carrier's Exhibit D.

(Exhibits not reproduced.)

OPINION OF BOARD: The positions of Mailman and Baggage-man involved in this claim are seven-day positions necessary to continuous operation. On the day in question the Mailman was ill so Carrier shifted the Baggage-man who had the same assigned hours over to the Mailman's position, and blanked the Baggage-man's position.

As stated in Award 4022 involving a similar claim between the same parties, this Division has on occasions too numerous to enumerate announced the rule that under the Sunday and Holiday Rule a seven-day position necessary to continuous operation must be filled on every one of the seven days. Thus the Sunday and Holiday Rule has been generally construed to impose on Carrier the obligation to fill seven-day positions necessary to continuous operation each and every one of the seven days. When Carrier blanked such a position for one day it violated such rule as construed and therefore the Agreement between the parties hereto containing such rule.

Carrier contends that Claimant herein, a Baggage-man, is not entitled to make this claim because he held no turn on an extra board but had a regular assignment and fulfilled that assignment. Furthermore, that he made no application to fill the position the day in question. The record shows such day was Claimant's rest day. Carrier's contentions are not well taken. We know of no requirement imposing the duty on an employee to request extra work. But there is a definite duty upon Carrier to fill the position on the day in question.

We have discussed the question whether the proper person was named as claimant and its effect on the propriety of the claim in Award 4022. For the reasons stated in that Award we must rule against Carrier on such contentions.

The claim should be sustained for failing to fill Moore's position of Baggage man on September 16, 1946, and at the penalty 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 Carrier violated the Agreement as set out in the Opinion.

AWARD

Claim (a and b) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.