

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violates Rule 30 of the current Clerks' Agreement by requiring Clerks Richard M. Fish and Martin Steed to work seven (7) days per week and compensating them at pro rata rate on the seventh (7th) day and holidays, and that

- (a) Mr. Richard M. Fish shall now be allowed the difference between what he was paid, pro rata rate of monthly salary of \$251.25, and punitive rate for service performed on Saturday, December 21, 1946 and all subsequent Saturdays together with the same consideration for Christmas Day 1946 and all subsequent holidays, and that
- (b) Mr. Martin Steed shall now be allowed the difference between what he was paid, pro rata rate of monthly salary of \$236.25, and punitive rate for service performed on Friday, December 20, 1946 and all subsequent Fridays together with the same consideration for Christmas Day 1946, and all subsequent holidays.

EMPLOYES' STATEMENT OF FACTS: Mr. Richard M. Fish last entered the service of the Carrier on March 31, 1924 on a position designated as Clerk—Round House Foreman's Office at Binghamton, New York. Mr. Fish still holds the same assignment and during the entire period he has been assigned on a seven (7) day per week basis.

Mr. Martin Steed last entered the service of the Carrier on October 4, 1928 on a position designated as Clerk—Round House Foreman's Office at Binghamton, New York. Mr. Steed still holds the same assignment and during the entire period he has been assigned on a seven (7) day per week basis.

Under date of December 14, 1946 the Local Representative of the Brotherhood at Binghamton, New York notified the Division Master Mechanic that Clerks Fish and Steed desired to convert their assignments from a seven (7) to a six (6) day per week assignment, Fish to be relieved on Saturday and Steed on Fridays. The Division Master Mechanic advised the Local Representative of the Brotherhood it was not the desire of the Management to afford this change in assignments. The position of the Division Master Mechanic was upheld by the Superintendent of Motive Power.

The Assistant to the Vice President and General Manager modified the decision of the Motive Power Department to the extent that

convert the positions on the basis of a current effective date, he would not accept such settlement of this case.

It is the Carrier's position that there is no rule in the Clerks' Agreement that provides for changing an assignment from a seven (7) day to a six (6) day per week basis when such position has been assigned on a seven (7) day per week basis since January 1, 1941, the date the Clerks' Agreement became effective, and has not been vacated up to the present time.

OPINION OF BOARD: Claimant Fish has been employed on a seven day week basis as a Clerk in the Binghamton Roundhouse since March 31, 1924. The Clerks' Agreement became effective on January 1, 1941. During its negotiation, there was some objection to changing this and other positions to six day assignments because of the consequent loss of compensation. To eliminate this objection, the following was included as a part of Rule 30, current Agreement:

"(c) When regular positions covered by this rule are now assigned to seven (7) days per week, the present incumbent may continue to work on the seventh (7th) day, at the pro rata rate of pay, so long as he remains on such position. When such a position is vacated, it will then be assigned on the basis of six (6) days, unless otherwise agreed to by the Management and the General Chairman."

On December 14, 1946, Claimant Fish informed the Carrier that he no longer desired to work seven days a week and wanted the position reduced to a six day assignment. There being no extra Clerks available until September 17, 1947, the Carrier did not until that time agree to provide relief on one day of the week, and then only with the understanding that if no relief man was available on his rest day that he would work his rest day at the pro rata rate. This was not agreed to but the Carrier says it now has available forces to comply fully with Claimant's request. The Organization refused, however, to accept conversions to a six day assignment on the basis of the date of the change.

Rule 30 (c) clearly means that the occupants of seven day positions can, if they desire, continue to work seven days at the pro rata rate. When a position is vacated, it will be assigned on a six day basis unless otherwise agreed to by the Management and the General Chairman. It is evident that subsequent agreements were contemplated which were to be effective when made in the manner that the rule indicates.

In adjusting a dispute, the Carrier on May 7, 1942, submitted the following interpretation for the consideration of the General Chairman:

"Decision: We are agreeable to the following: (1) Effective at once, any employe bidding on a position permitting seven (7) day performance of incumbent who has the qualifications permitting him to work such position on a seven (7) day basis must declare his intentions immediately when assuming the position, stating whether he will work such position on a seven (7) day or six (6) day basis. (2) Employes now assigned seven (7) day positions on a seven (7) day incumbency basis who wish to convert such positions to a six (6) day basis may make request of their immediate supervisor to so do and proper consideration will be given. It is our understanding that claim for compensation is waived."

On June 11, 1942, the General Chairman accepted the interpretation in the following language:

"Your decision is accepted. In accepting this decision it is our understanding that we may expect our present seven (7) day assigned employes will be permitted to convert their positions from seven (7) to six (6) day assignments, unless they are located at isolated points when it would work considerable hardship to relieve them."

The acceptance was a qualified one. The General Chairman accepted the interpretation with the understanding that the words "proper consideration will be given" would mean that "employees will be permitted to convert their positions from seven (7) to six (6) day assignments, unless they are located at isolated points where it would work considerable hardship to relieve them." The record indicates that the Carrier acquiesced therein.

No contention is made that Binghamton is an isolated point. Consequently, Claimant was entitled to have his position converted to a six day assignment when he requested it. Claimant Steed is in an identical situation with Claimant Fish and he is entitled to the same treatment.

It is the holding of the Board that these two positions be assigned a rate of pay calculated on a six day week basis, retroactive to December 14, 1946, and that the Claimants be paid for holidays and rest days worked subsequent thereto at the time and one-half rate. Claimants are to be compensated by payment of any difference between the total amount thus arrived at and the amount actually received.

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

The Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. L. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.