

**Award No. 4550
Docket No. CL-4514**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement—

1. When, on February 10, 1948, they called Mrs. Betty Howenstein, Clerk, to fill vacancy of Clerk in the Reservation Bureau in the Union Station at St. Louis, a position designated by Management as necessary to the continuous operation of the Carrier and compensated her for services performed at less than a minimum day's wage of 8 hours' pay.
2. That Mrs. Howenstein be paid the difference between what she was actually allowed, namely, 5½ hours at rate of \$9.33 per day, amount \$6.41 and 8 hours (day) at rate of \$9.33 per day, amount \$9.33 or 2½ hours at rate of \$9.33 per day, amount of \$2.92.

EMPLOYES' STATEMENT OF FACTS: There is employed in the Reservation Bureau of the Carrier at its St. Louis Union Station, a force of 21 Reservation Clerks, plus 2 additional Clerks designated as "Relief Clerks". Twelve of the 21 position are designated as necessary to the continuous operation of the Carrier under Rule 44 of agreement governing working conditions of the employes, effective April 1, 1945, while 9 of the 21 positions are designated 6-Day workers, requiring the services of each Monday through Saturday, inclusive. Each of the 12 positions designated by the Management as necessary to the continuous operation of the Carrier are assigned one regular day off duty in seven, in compliance with Rule 44, and this requires the employment of two regular reservation relief clerical workers, whose hours of service are as designated by Management in its Bulletin 989, dated October 21, 1947. (Employes' Exhibit "A".)

Mr. Charles Lange was one of the two regular Reservation Relief Clerks and in conformity with Bulletin 989, was assigned to work on Tuesday, February 10, 1948, from 7 A. M. to 3:30 P. M. Mr. Lange did not, however, report for service at 7 A. M. on February 10th and the Management called Mrs. Betty Howenstein, furloughed Clerk, at or about 7:45 A. M. to report for work to fill the vacancy caused by Mr. Lange's non appearance. Mrs. Howenstein resides approximately 16 miles distant from the office; however, upon being apprised at or about 7:45 A. M. of her services being required, she arranged to report for work as directed, arriving at the office at or about 9:20 A. M. and was immediately assigned to work.

work, consequently, are not entitled to a day's pay. Mrs. Howenstein actually worked 5 and $\frac{3}{4}$ hours and was paid accordingly.

With the exception of Rule 36 which, as we have previously shown, is not applicable to this case, there are no rules in the agreement guaranteeing a full day's pay unless a full day's work is performed.

Furloughed employes are guaranteed all extra work, short vacancies, and/or vacancies occasioned by filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces, and all such work is proffered those who make themselves available, as soon as vacancies are known to exist. We surely can't be expected to anticipate such vacancies. In this case the regular employe did not notify us that he would be unable to report until the starting time of his position, and there was no undue delay on our part thereafter in seeking replacements.

The claimant was paid for every hour that she worked, and this submission is an attempt on the part of the organization to exact payment from the carrier for service not rendered, brought about by the deficiencies of one of their own constituents. It is not supported by any rules of the agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Terminal Board of Adjustment contends that Carrier, on February 10, 1948, violated their agreement when it compensated Claimant, Mrs. Betty Howenstein, a clerk, for less than eight hours of pay. It asks that she be paid the difference between what she was paid and what she would have received if paid for eight hours.

The record discloses that Carrier employs 21 Reservation Clerks in the Reservation Bureau in its Union Station in St. Louis. Twelve of these positions are designated as necessary to its continuous operation under Rule 44 and nine are designated as six-day positions. In order to give each of the 12 positions necessary to the continuous operation of the Carrier proper relief days two positions of Relief Clerk were established. On February 10, 1948, Charles Lange, one of the regular reservation relief clerks, did not fill his assignment. His assigned hours on that day were from 7:00 A.M. to 3:30 P.M. Carrier did not know that Lange was not going to fill his regular assignment until the starting time thereof. It then endeavored to fill the vacancy and got in touch with Claimant at 7:35 A.M. Claimant immediately responded to the call but because she lived some 16 miles from the station did not arrive for work until 9:15 A.M. She was immediately assigned to work. She worked until 3:30 P.M., the end of Lange's assignment, and was paid for the 5 $\frac{3}{4}$ hours she actually worked.

The type of position herein involved, that is, one necessary to the continuous operation of the Carrier under Rule 44 of the parties' Agreement, cannot be blanked in whole or in part. See Awards 561, 3661, 3745, 3814, 3891, and 4022 of this Division.

The record shows that the position here involved was blanked in part on February 10, 1948, from 7:00 A.M. to 9:15 A.M. for which period Carrier is liable. In connection with the claim as made in behalf of Mrs. Betty Howenstein, this Board has often held that the penalty for a violation of an agreement is the important factor so the agreement will be enforced and that the claim on behalf of a particular employe is merely an incident which is of no concern to the Carrier. See Awards 2282, 3890, 4022, and 4370 of this Division.

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 Employes involved in this dispute are respectively carrier and employes 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.

AWARD

Claim sustained for 2 $\frac{1}{4}$ hours at the rate of \$9.33 per day or \$1.17 per hour.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 12th day of September, 1949.