

Award No. 4551
Docket No. CL-4515

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**

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated Rule 46 when it failed and declined to pay F. E. Clark, Clerk, Mechanical Department, a minimum of six days' per week for the period May 20, 1946, to September 14, 1946, inclusive, and;

(b) F. E. Clark be remunerated on the basis of \$7.565 per day for the number of days each week during the period May 20, 1946, to September 14, 1946, inclusive, necessary to make him whole for six days' per each week.

EMPLOYEES' STATEMENT OF FACTS: Immediately prior to March 16, 1946, the force of employees covered by the Clerks' Agreement in the Mechanical Department of the Carrier consisted as follows:

Title	Incumbent	†Rate	Hours	Rest Day	Sen.
Chief Clerk	G. W. Hill	286.40	8 am to 5 pm	Sun.	5- 1-37
Eng. Disp.	F. Conroy	312.86	7:30 am to 4:30 pm	None	7- 1-18
Eng. Disp.	B. Upham	272.45	5:30 pm to 2:30 am	None	7- 6-45
Steno-Clerk	N. M. Tinker	8.19	8 am to 5 pm	Sun.	9- 9-43
Stenographer	Maxine Flinner	6.75	8 am to 5 pm	Sun.	9-20-43
*Clerk	John E. Taylor	7.365	11 pm to 3 pm	Tues.	12- 2-09
*Clerk	F. E. Clark	7.365	3 pm to 11 pm	Sat.	8-28-44
*Clerk-Caller	A. W. Zander	7.045	7 am to 3 pm	Mon.	8- 6-26
Messenger	H. J. Ladd	5.84	8 am to 5 pm	Sun.	1- 8-46

†Rates increased 2½ cents per hour effective May 22, 1946.

*Positions necessary to continuous operation. Rule 43.

In the absence of a Relief Clerk employees Taylor, Clark and Zander were working their assignments seven days each week. On March 16, 1946, R. L. Laskey, holding seniority rights (July 18, 1941) in the Mechanical Department, returned from military service leave of absence and displaced F. E. Clark. At this time Clerk Taylor was laying off account illness and Mr. Clark was assigned to fill Taylor's position pending Taylor's return to service.

Immediately prior to the return to service of Clark, John Taylor, the Carrier posted the following Bulletin:

The Carrier contends that the guarantee provided for in Rule 46 applies only to the regular incumbents of the position and not to extra furloughed or relief men.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim in behalf of F. E. Clark, a clerk in the Mechanical Department. It contends that he should have been paid for six days per week during the period from May 20, 1946, to September 14, 1946, inclusive.

The record discloses that on March 16, 1946, Claimant was displaced as a clerk in the Mechanical Department of Carrier by an employe returning from the service. Thereafter, on May 13, 1946, Carrier, by Bulletin 8-E, bulletined a position of Relief Clerk at its 27th Street Shop. This position was bulletined to relieve two Clerks and one Clerk-Caller on their regular relief days, these positions being necessary to the continuous operation of the Carrier within the meaning of Rule 43—Sunday and Holiday Work, and to relieve regular clerks and caller at the Roundhouse when they are absent on account of sickness, vacations, etc. Claimant, by Bulletin 9-E dated May 20, 1946, was assigned thereto. By "Notice" dated July 3, 1946, these bulletins advertising the relief position and assigning Claimant thereto were cancelled and the position was, in fact, abolished. Thereafter Carrier called Claimant to relieve these three positions, that is, the two Clerks and Clerk-Caller on their respective days off. This continued until September 15, 1946, when one of the clerks was assigned to a messenger position and Claimant bid in and was assigned to that Clerk position.

Between July 3, 1946, when the position of Relief Clerk was abolished, and September 15, 1946, when he was assigned to the position of Clerk, Claimant was a furloughed employe within the meaning of the Agreement and subject to that status in the application of the rules thereof.

Rule 46 provides:

"The present monthly, daily or hourly basis of pay shall not be changed except by agreement between the duly authorized representatives of the parties hereto.

The conversion of the monthly, daily, or hourly rates to a different basis shall not operate to establish a rate of pay more or less favorable than is now in effect.

Nothing herein shall be construed to permit the reduction of days for the employes covered by Seniority Classes 1 and 2 of Rule 1 below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.

The provisions of this rule do not apply to extra board employes or men called from the furloughed list, unless they occupy what is established and recognized as a regular six-day assignment during the absence of the regular incumbent."

Rule 1, as far as material under Rule 46, provides:

"These rules shall govern the hours of service and working conditions of the following class of employes: * * *

Mechanical

Seniority Class One—Clerical Workers.

Seniority Class Two—Engine Crew Callers, Messengers."

Under Rule 43—Sunday and Holiday Work, Carrier should exhaust the opportunity of relief work with as many full-time positions as possible and only a residue of less than a full-time position at a particular operation may be filled by extra or furloughed men. See Awards 596 and 4133 of this Division.

If there are less than six relief days available then Carrier is not under obligation to establish a relief position but may, as evidenced by the fourth paragraph of Rule 46, use extra or furloughed employes for the relief thereof. However, if Carrier chooses to establish a regular relief position for less than six relief days and assigns an employe thereto, then, under the third paragraph of Rule 46, it is required to give the occupant thereof six days of work per week as therein provided. This is true under the principle that when one or more exceptions to a provision are expressed no other or further exception will be implied. See Awards 2009 and 3825 of this Division.

Carrier, having established the position of Relief Clerk and assigned Claimant thereto on May 20, 1946, was obligated, under the third paragraph of Rule 46, to provide him with six days of work as long as his assignment lasted, which was July 3, 1946. The record discloses that during this period he worked from as low as one to as high as seven days per week. During this period he was entitled to six days of work per week and to be paid accordingly. After July 3, 1946, when Carrier abolished the position, it properly used Claimant as a furloughed employe under the fourth paragraph of Rule 46 and the claim should not be allowed subsequent thereto.

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 but only for the period from May 20, 1946, to July 3, 1946, inclusive.

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.