

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

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

(a) Carrier violated the provisions and intent of the current Clerks' Agreement and Letter of Understanding governing relief of employes on rest days dated April 15, 1943, in furnishing rest day relief to incumbent of Position No. 37, PBX Operator, on September 12, 1948;

(b) Miss Katherine S. Sailer, regular occupant of Position No. 37, shall be compensated for eight hours at time and one-half her regular rate account not being used to protect her regular assignment on September 12, 1948.

EMPLOYEES' STATEMENT OF FACTS: PBX Operator Position No. 37, Topeka, Kansas, hours 8:00 A. M. to 4:00 P. M. a position necessary to the continuous operation of the Carrier under the provisions of Article VIII of the October 1, 1942, Agreement and so assigned, rest day Sunday, was occupied by Miss Katherine S. Sailer during September, 1948. On Sunday, September 12, 1948, which was Miss Sailer's rest day, Miss Anna Jean Strange, who was working vacation relief for Miss Thelma J. Salzer, the regular assigned relief employe who relieves Miss Katherine Sailer on her position on Sundays, requested and was granted the day off for personal reasons. There were no qualified off-in-force-reduction employes available and, instead of notifying or calling Miss Sailer to protect her own assignment on that date, as provided by Letter of Understanding dated April 15, 1943, Carrier utilized the services of Mrs. Alice M. Oman, who was regularly assigned to and occupied PBX Operator Position No. 343, hours 8:30 A. M. to 5:00 P. M., six days per week, rest day Sunday, to protect this rest day relief, paying her for this service at pro rata rate instead of penalty rate of time and one-half as required by Agreement Rules. Claim in behalf of Mrs. Oman for proper compensation at penalty rate for service performed by her on Sunday, September 12, 1948, was progressed to the N. R. A. B., Third Division, in Docket No. CL-5058 and the Employees' Claim covered thereby was sustained by Award No. 5067.

POSITION OF EMPLOYEES: There is in evidence an Agreement between the parties bearing effective date October 1, 1942, in which the following rule appeared:

37 on September 12, 1948, her assigned rest day, the protection of which was actually a portion of the assignment of regular rest day relief Position No. 325. The instant claim which seeks compensation in her behalf account not used on her rest day is clearly not supported by any rule of the current Clerks' Agreement or otherwise, and the Carrier respectfully requests that the Board deny it.

The Carrier is uninformed as to the arguments the Brotherhood will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

All that is herein contained has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to PBX Operator position No. 37, a position necessary to the continuous operation of the Carrier. Sunday, September 12, 1948, the assigned rest day of position No. 37, the holder of Relief Position No. 325 assigned to relieve Claimant on her rest day did not work having been granted leave of absence on that day. Carrier filled the position on this Sunday by assigning an employe, one Mrs. Alice M. Oman, who at that time was filling a regular assignment on a six-day position and who had requested permission to fill the position because of the prospective absence of the holder of the relief position. Employees file claim as indicated.

It is the Employees' contention that Claimant was entitled to fill the Sunday assignment in accordance with a letter of understanding dated April 15, 1943, concerning positions necessary to the continuous operation of the Carrier. Carrier contends that it had the right to assign the work as it did under Article III, Rule 10(a) applying to the filling of temporary vacancies.

It is apparent from the letter Agreement, dated April 15, 1943, that the parties contemplated the filling of positions necessary to the continuous operation of the Carrier on the seven days of each week, by employes regularly assigned six days with a regularly assigned rest day, by employes regularly assigned to relief positions established for the purpose of relieving those regularly assigned on their rest days and by the use of available qualified off-in-force reduction employes to perform relief service. In that Agreement Carrier specifically reserved its right to furnish relief on rest days of the regularly assigned employes by employing qualified off-in-force reduction employes. It made no mention of using employes in service at the point where a "vacancy" may occur on a rest day of the regularly assigned occupant of the position by reason of the absence of the regularly assigned relief employe as provided in Rule 10(e), nor did it refer to that method of providing relief in the first instance. It contemplated the use of the regular incumbent on his rest day because of the temporary absence of an assigned relief employe and nonavailability of a qualified off-in-force reduction employe. (See Paragraph 3, Section 3 of said letter Agreement of April 15, 1943.) Throughout the Agreement there are constant references to the use of the regularly assigned occupant, regularly assigned relief employe and qualified off-in-force reduction employes to afford seven-day coverage on these positions. Considering these factors, in our opinion, the special agreement by necessary implication is inconsistent with or repugnant to the application of Rule 10(e) in the furnishing of relief on rest days of the regularly assigned occupant of these seven-day necessary-to-continuous-operation-of-Carrier positions. Under the Special Agreement, therefore, when the holder of the relief position does not report for duty, in the absence of available qualified off-in-force reduction employes, the right to the work on his rest day belongs to the holder of the regular assignment. It follows that the claim should be sustained. In accordance with numerous holdings of this Board, the applicable penalty is the pro rata rate and not the punitive.

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 Employee involved in this dispute are respectively Carrier and Employee 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 (1) sustained; Claim (2) sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.