

Award No. 5608
Docket No. CL-5628

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**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 employees on rest days dated April 15, 1943, in furnishing rest day relief to incumbent of Position No. 41, PBX Operator, on January 7, 1949; and,

(b) Miss Anna Jean Strange, regular occupant of Position No. 41, shall be compensated for eight hours at time and one half her regular rate account not being used to protect her regular assignment on January 7, 1949.

EMPLOYEES' STATEMENT OF FACTS: PBX Operator Position No. 41, Topeka, Kansas, hours 7:00 A. M. to 3:00 P. M., a position necessary to the continuous operation of the Carrier and so assigned, rest day Friday, was occupied by Miss Anna Jean Strange during January, 1949. On Friday, January 7, 1949, which was Miss Strange's rest day, the regularly assigned relief clerk, Miss Virginia Maxwell, was sick and not available to perform relief on Miss Strange's position. There were no qualified off-in-force-reduction employees available and, instead of notifying or calling Miss Strange to protect her own assignment on that date, as provided by Letter of Understanding dated April 15, 1943, Carrier utilized the services of Miss Helen Payne, who was regularly assigned to and occupied Messenger Position No. 150, hours 9:00 A. M. to 6:00 P. M., to protect this rest day relief.

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

"ARTICLE VIII

Section 1. Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation

of Article III, Section 10-a of the current Clerks' Agreement, which prescribed the manner in which temporary vacancies of fifteen (15) calendar days or less duration are to be filled. There actually existed in the Eastern Lines Relay and PBX Office at Topeka, Kansas, on January 7, 1949, the date involved in this dispute, a regular assigned rest day relief position (No. 325), the incumbent of which regularly relieved employees necessary to the continuous operation of the Carrier on their rest days, including the claimant Miss Strange assigned to PBX Operator Position No. 41. Miss Maxwell's absence on January 7, 1949 from position No. 325, to which she was regularly assigned, unquestionably created a temporary vacancy in her position and to which Miss Payne obtained assignment in accordance with her rights under Article III, Section 10-a of the current Clerks' Agreement. Miss Payne was just as much a rest day relief employee on that date within the meaning and intent of the Letter of Understanding as was Miss Maxwell, the regular incumbent of rest day relief position No. 325. The Letter of Understanding did not, nor was it ever intended to apply to a situation such as is presented in the instant dispute and there is no support whatever in the letter for the Employees' position that the Carrier should have called the claimant Miss Strange to protect Position No. 41 on January 7, 1949, her rest day, all contentions of the Employees to the contrary notwithstanding.

The Carrier repeats that the claimant Miss Strange, in the circumstances involved in this dispute, unquestionably had no right to work Position No. 41 on January 7, 1949, 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: The facts, Agreement and circumstances involved in this docket are similar to those involved in Award 5607. The Opinion and Findings therein are equally applicable here.

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 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.