

Award No. 5795
Docket No. CL-5842

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(1) The Carrier violated provisions of Rule 12, Work Week, Sections one and three of the Memorandum of Agreement, Schedule for Clerks, effective September 1, 1949, signed at St. Louis on July 20, 1949, also Rule 12, Section 3, paragraph (b) and Memorandum of Agreement, Schedule for Clerks, effective September 1, 1949, signed at St. Louis on August 3, 1950, by working extra clerk N. L. Antle, Decatur Division, a total of twelve (12) consecutive days, without a rest day, and compensating him at straight time rate for service performed as a Yard Clerk on Saturday, September 2, and Sunday, September 3, 1950; after he worked five (5) consecutive days as a clerk, Monday, August 28, to Friday, September 1, inclusive.

(2) Clerk N. L. Antle be allowed the difference between straight time rate and punitive rate for the eight (8) hours worked as Yard Clerk on Saturday, September 2, and Sunday, September 3, 1950.

JOINT STATEMENT OF FACTS: N. L. Antle is an Extra Clerk and is shown on the July 1, 1950, Decatur Division clerical seniority list with seniority dating from February 11, 1949.

Mr. Antle was used during the period, Wednesday, August 23, to Sunday, September 3, 1950, to fill temporary vacancies on various clerical assignments. The dates and assignments worked during the period referred to above are set out in chronological order below:

	Date	Assignment Worked	Regular Days off of Assignment Worked
Wednesday,	August 23, 1950	No-Bill Clerk, Job No. 52	Monday and Tuesday
Thursday,	August 24, 1950	No-Bill Clerk, Job No. 52	Monday and Tuesday
Friday,	August 25, 1950	No-Bill Clerk, Job No. 52	Monday and Tuesday
Saturday,	August 26, 1950	No-Bill Clerk, Job No. 52	Monday and Tuesday
Sunday,	August 27, 1950	No-Bill Clerk, Job No. 52	Monday and Tuesday
Monday,	August 28, 1950	No-Bill Clerk, Job No. 66	Saturday and Sunday
Tuesday,	August 29, 1950	No-Bill Clerk, Job No. 66	Saturday and Sunday
Wednesday,	August 30, 1950	Westbound Desk Clerk, Job No. 49	Monday and Tuesday
Thursday,	August 31, 1950	Westbound Desk Clerk, Job No. 49	Monday and Tuesday
Friday,	September 1, 1950	Westbound Desk Clerk, Job No. 49	Monday and Tuesday
Saturday,	September 2, 1950	Westbound Desk Clerk, Job No. 49	Monday and Tuesday
Sunday,	September 3, 1950	Westbound Desk Clerk, Job No. 49	Monday and Tuesday
Monday,	September 4, 1950	(Did not work)	
Tuesday,	September 5, 1950	(Did not work)	

The Committee's contention is in conflict with provisions of Rule 12, Section 1 (h), and Rule 12, Section 3 (a), of the Schedule for Clerks, and the contention must, therefore, be dismissed and the claim denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The basis of this claim is an alleged violation of the provisions of Rule 12 of Memorandum of Agreement entered into by and between the Carrier and the Organization effective September 1, 1949. This Rule contains the schedule for clerks. The Organization contends that N. L. Antle on whose behalf the claim is made was, in violation of the Agreement, required to work twelve consecutive days in clerk positions from Wednesday, August 23 to Sunday, September 3, 1950 inclusive without rest days. It is insisted that he was entitled to Saturday and Sunday September 2 and 3 as rest days and having been required to work on those days he is, under the provisions of the Rule, entitled to be compensated at the rate of time and one-half of the basic rate instead of the regular rate which was paid.

From the joint tatement of facts on which the claim was presented it appears that Antle was an extra clerk with seniority on the Decatur Division. On the days in question he was used to fill temporary vacancies in various clerical positions. He occupied none of the positions as assigned pursuant to bid. His movements after August 23 were not to or from an extra or furloughed list but were from one position to another.

The controlling facts are the same as those considered in Docket CL-5840, Award 5794 and of course the construction and application of Rules there are controlling here. That construction and application are adopted by reference as a part of this opinion.

The conclusion therefore is that N. L. Antle was entitled to the rest days claimed and that for failure to allow them the Carrier is required to pay him at the rate of time and one-half of the basic rate for the work done on those days.

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 Carrier failed to pay in accordance with the requirements of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 26th day of May, 1952

DISSENT TO AWARD NO. 5795, DOCKET NO. CL-5842

As this award relies upon the holding in Award 5794, our dissent to that award is by reference thereto hereby made our dissent to this award.

(s) A. H. Jones
(s) W. H. Castle
(s) R. M. Butler
(s) C. P. Dugan
(s) J. E. Kemp