

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) Action of Carrier in requiring Messenger Ted T. Sanders, Kansas City Terminal Division, to work the assigned rest days of the position to which he had been assigned, by transferring him temporarily to another Messenger assignment and compensating him at straight time rate of Messenger position for the two days worked, is in violation of Rule 12, Section 3(b), **Service on Rest Days**, Memorandum of Agreement, Schedule for Clerks, effective September 1, 1949 and signed at St. Louis August 3, 1950, also **Rule 12, Work Week**, Memorandum of Agreement, Schedule for Clerks, effective September 1, 1949 and signed at St. Louis July 20, 1949.
- (2) Requiring Messenger Sanders to work two Messenger assignments of eight (8) hours each within a twenty-four hour period, 4:00 P. M., Monday, March 6 to 4:00 P. M., Tuesday, March 7, and compensating him at straight time rate for the second eight (8) hours he was used is in violation of Rule 2, **Basis of a Day's Work**, and **Rule 7—Overtime and Calls**, Schedule for Clerks effective November 1, 1948.
- (3) Ted T. Sanders, Messenger, be paid eight (8) hours at time and one-half rate of Messenger position on Saturday, March 4 and Sunday, March 5, rest days of his assignment, and eight (8) hours at time and one-half rate on Tuesday, March 7, for assignment worked 7:30 A. M. to 4:00 P. M., less amount paid for on the three days, March 4, 5 and 7, 1950.

JOINT STATEMENT OF FACTS: Ted T. Sanders was an Extra Messenger.

Messenger's Job No. 33 was regularly assigned to A. C. Pinter, who was also an Extra Clerk. The hours of assignment on Messenger's Job No. 33 are 7:30 A. M. to 4:00 P. M., Monday through Friday, with Saturday and Sunday the assigned weekly rest days.

A. C. Pinter, the regular occupant of Messenger's Job No. 33, was absent from that position filling a temporary vacancy on a clerical assignment, and

When the rules of the Schedule for Clerks, effective November 1, 1948, were revised so as to conform to the Agreement of March 19, 1949, the rule relating to the payment of daily overtime was not changed.

The contentions of the Committee should be dismissed and the claims denied in their entirety.

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 claim here is in two parts. The first part is an alleged violation of the provisions of Rule 12 of the Memoranda of Agreement entered into by and between the Carrier and the Organization effective September 1, 1949. The Organization contends that Ted Sanders was, in violation of the Agreement, required to work Saturday and Sunday, March 4 and 5, 1950, his rest days for which he was paid at the basic straight time rate whereas under the provisions of Rule 12 he should have been paid one and one-half times the basic rate.

The second is that he was required to work a second eight hours in twenty-four for which he was paid the straight time rate in violation of the basic day and overtime and call rules thus entitling him to the time and one-half rate for the second eight hours.

The position or positions occupied were those of Messenger. The status of Sanders was that of Extra Messenger. From the joint statement of facts on which the claim was presented it appears that on Monday, February 27, through Wednesday, March 1, 1950, Sanders occupied Job No. 33, 7:30 A. M. to 4:00 P. M. The rest days of the position were Saturday and Sunday. From Thursday, March 2, through Monday, March 6, he occupied Job No. 34, 4:00 P. M. to 12:30 A. M. The rest days of this position were Tuesday and Wednesday. On Tuesday, March 7, he occupied Job No. 34, 7:30 A. M. to 4:00 P. M. He occupied neither of the positions pursuant to bid. The dates March 6 and 7 and the work on those days constitute no part of the first part of the claim. They relate solely to the second part.

Rule 12, Section 1 (a) of the Agreement in general terms established the 40-Hour Work Week for assigned and unassigned employees. The work week of an assigned employee is defined as a week beginning on the first day on which the assignment is bulletined to work. The work week of an unassigned employee is defined as seven consecutive days starting on Monday.

Except as provided under Rule 12, Section 1 (g) the rest days of assigned and unassigned employees are the sixth and seventh days of the work week. The exception however has no application here.

The first paragraph of Rule 12, Section 3 (a) contains the following:

"Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, * * *."

The second paragraph of this Rule contains the following:

"Employees worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh day of their work weeks, except where such work is performed by an employee due to moving from one

assignment to another or to or from an extra or furloughed list,
* * *."

Sanders was not a regularly assigned employe within the meaning of Rule 12, Section 1 (i), therefore a week for him was seven days commencing on Monday, and he was entitled to Saturday and Sunday as his rest days unless in this instance he was subject to the exceptions contained in the two partially quoted paragraphs of Rule 12, Section 3 (a).

It is to be observed that the exceptions apply (1) to an employe moving from one assignment to another (2) from an extra or furloughed list or (3) to an extra or furloughed list. The second and third exceptions are of no concern here.

Whether or not his employment fell within the exceptions depends upon the definition to be applied to the term "assignment" as it is used in the exceptions.

The position of the Organization is that no employe may be regarded as occupying an assignment unless the position he is filling is being filled pursuant to bulletin and bid by him.

The Carrier contends substantially that "assignment" as used in the exceptions encompasses any and all work which the employe is required to perform for which he is qualified under the Agreement whether it be a bulletined and bid position or the filling of temporary vacancies. It further contends removal from one temporary vacancy to another comes within the exceptions.

It is thought that from an analysis of Rule 12, Section 1 (i), as follows, the proper definition of "assignment" as used in the exceptions may be obtained:

"The term 'work week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven (7) consecutive days starting with Monday."

This provision defines "regularly assigned" employes and names but in terms fails to define "unassigned" employes. It recognizes two classes of employes, the "regularly assigned" and the "unassigned." It, read with the two parts of paragraphs quoted from Rule 12, Section 3 (a), at least inferentially recognizes but two classes of work, one which is performed under a regular assignment and one which is not.

It would seem to follow that an employe who, in his employment, falls within the second class is not performing work of an assignment, and when he moves from one such position to another he does not, within the meaning of the exceptions discussed, move from one assignment to another.

On the basis discussed the conclusion is that the first part of the claim has been sustained. See Awards 5494, 5495, 5705, Dockets CL-5840, Award 5794, CL-5842, Award 5795.

As to the second part of the claim, on Monday, March 6, Sanders occupied Job No. 34. He worked therein from 4:00 P. M. to 12:30 A. M., March 7. On March 7 he occupied Job No. 33 from 7:30 A. M. to 4:00 P. M. He therefore worked two regular shifts of eight hours each in a period of twenty-four consecutive hours.

This in the light of previous Awards of this Division entitled him to compensation for the second eight hours at one and one-half times the rate of the position.

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

That the record sustains the two parts of the claim as presented.

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. 5796, DOCKET NO. CL-5844.

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**