

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 Miss M. L. Sadler, regularly assigned messenger and extra clerk at Moberly, Missouri, to work position of stenographer in the office of Chief Dispatcher at Moberly on Sunday, February 5, 1950, one of her assigned rest days, and compensating her at straight time rate of the position worked on Sunday, February 5, is in violation of **Rule 12, Work Week**, Memorandum of Agreement, Schedule for Clerks effective September 1, 1949 and signed at St. Louis July 20, 1949, also **Service on Rest Days Rule, Memorandum of Agreement, Schedule for Clerks** signed at St. Louis, August 3, 1950 and effective September 1, 1949.

(2) Miss M. L. Sadler, messenger and extra clerk, be paid eight (8) hours at time and one-half rate of the position worked on her assigned rest day, Sunday, February 5, 1950, less the amount she was paid for the eight (8) hours worked on this date.

JOINT STATEMENT OF FACTS: Miss M. L. Sadler is shown on the July 1, 1950, seniority roster of messengers at Moberly with seniority dating from April 15, 1948, and held a regular assignment at Messenger, rate nine dollars and thirty cents (\$9.30) per day, on which she was assigned to work Monday through Friday with Saturday and Sunday the assigned weekly rest days, and worked on that assignment Monday, January 30, through Friday, February 3.

The position of Stenographer in the Office of the Chief Dispatcher at Moberly is a seven (7) day position.

The regularly assigned Stenographer in the Office of the Chief Dispatcher, rate twelve dollars and eight cents (\$12.08) per day, is assigned to work Tuesday through Saturday with Sunday and Monday the assigned weekly rest days.

The rest days on the position of Stenographer in the Chief Dispatcher's Office were not a part of any assignment on the date in question.

At the time this claim arose, the position of Stenographer in the Chief Dispatcher's Office was being filled on Sundays and Mondays by a qualified, extra employee.

One of the provisions to which the five (5) day work week, established by the above quoted rule, is subject, is Rule 12, Section 3 (a), of the Schedule for Clerks, as amended by the Memorandum of Agreement, dated July 20, 1949, effective September 1, 1949, reading as follows:

“(a) — Overtime Provisions.

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, or where days off are being accumulated under paragraph (g) of Section 1 of this Rule 12.

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 days 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, or where days off are being accumulated under paragraph (g) of Section 1 of this Rule 12.

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.” (Underscoring added).

The work performed by Miss Sadler on Sunday, February 5, 1950, does not come within the overtime provisions of the Schedule for Clerks, but, to the contrary, is specifically excepted therefrom by Rule 12, Section 3 (a) of that Schedule, quoted above.

The Committee's contention that Miss Sadler should be paid at the time and one-half rate when used in line with her seniority as an extra clerk to work the position of Stenographer in the Office of the Chief Dispatcher on February 5, 1950, ignores the exceptions stipulated in Rule 12, Section 3 (a) governing payment for work performed in excess of forty (40) hours or in excess of five (5) days in the work week, established by Rule 12, Section 1 (a), and those contentions should 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 the claim here is an alleged violation of the provisions of Rule 12 of Memoranda 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 M. L. Sadler, on whose behalf the claim is made, was, in violation of the Agreement, required to work on Sunday, February 5, 1950, which was one of her assigned rest days, and that having been so required to work she is entitled to be compensated at the rate of time and one-half of the basic rate instead of the regular rate which was paid.

It is disclosed by the joint statement of facts on which the claim was presented that Miss Sadler held seniority on the roster of messengers and that her work week started on Monday. She worked Monday, January 30, through Friday, February 3, 1950, and did not work on Saturday which was one of her rest days. She was also an extra clerk on the seniority roster of Clerks. As the available extra clerk she was called to work the position of stenographer in the Office of the Chief Dispatcher on Sunday, February 5, which was the second of her rest days on her position as messenger. It is for the work performed on this day that the claim is made.

In general terms Rule 12, Section 1 (a) of the Agreement established the 40-Hour Work Week. Section 1 (i) defined the 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 the 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 days 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 * * *."

The joint statement of facts recites that Miss Sadler held a regular assignment as messenger. She held no regular assignment on the Clerks' roster. She was as has been stated an extra clerk. As such her rights are controlled by the two partially quoted paragraphs of Rule 12, Section 3 (a) including the exceptions.

It is to be observed that the exceptions apply (1) to an employee moving from one assignment to another, (2) from an extra or furloughed list, or (3) to an extra or furloughed list.

In this instance exceptions (1) and (3) have no application since it is clear that Miss Sadler was moved from the Clerks' extra list to a Clerks' roster position in the Office of the Chief Dispatcher.

The rights which Miss Sadler had to her rest days by virtue of her work under the Messenger roster may not be imposed as a burden on the obligation of the Carrier to give to her the work which she performed in the Office of the Chief Dispatcher.

The following from Award 5629 appears to be apropos here:

"It is true that the Carrier is the sole employer, but the employment rights of the employees are by agreement segregated and distributed into crafts. This being so in situations where an employee acquires status under two Agreements, the contractual distribution into crafts is violated if his status under one Agreement is given any

effect upon his status under the other, whether to his advantage or disadvantage."

This leads to the conclusion that the work performed for which claim is made was compensable at the straight time rate.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Ill., this 26th day of May, 1952.