

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

UNION BELT OF DETROIT

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

(a) The Agreement governing hours of service and working conditions between The Union Belt of Detroit and the Brotherhood of Railway Clerks was violated at Detroit, Michigan when the Carrier required Clerk James Brownie to work six (6) days in his work week beginning Tuesday, April 18, 1950, and compensated him at pro rata rate instead of time and one-half for the sixth (6) work day, and

(b) That Clerk Brownie shall now be paid the difference between amount received at straight time and the amount he should have received at time and one-half times his regular rate for work performed on April 24, 1950.

EMPLOYEES' STATEMENT OF FACTS: Employee James Brownie is regularly assigned to a position of Zone Clerk on the Union Belt of Detroit. His assignment and hours of service is subject to rules of an agreement between the parties.

Prior to April 21, 1950 Clerk Brownie was assigned to a work week of Tuesday through Saturday with Sunday and Monday as designated rest days. On this date the Carrier issued Bulletin No. 21-50 (Employees' Exhibit No. 1) changing the employee's assigned rest days from Sunday and Monday to Saturday and Sunday, effective April 24, 1950. This required Clerk Brownie to work six days during his 40-hour work week period commencing on April 18 and ending on April 24. As a consequence he only received one day of rest in seven during the week in question, which was Sunday, April 23, 1950.

Under Rule 23-(2) (i) employee Brownie's work week began on Tuesday April 18 and terminated on Monday, April 24, or seven days from the beginning of the first day on which his assignment was bulletined to work.

Employee claimed compensation at the rate of time and one-half his regular rate of pay for services performed on Monday, April 24. This claim was presented to Management on May 23 (Employees' Exhibit No. 2) and

In this case it cannot be shown that claimant performed service in excess of forty hours in any work week while that work week was in effect. It cannot be shown that claimant performed work on more than five days in any work week while that work week was in existence. Further, it cannot be shown that claimant performed service on any day of the week which was an assigned rest day such service was performed.

Claim should accordingly be declined.

It is further the position of the Union Belt that in this case the assignment to work Tuesday through Saturday was one assignment, properly established by bulletin, and the assignment to work Monday through Friday properly established by the required bulletin effective with the beginning of a new work week on Monday, April 24, was another assignment. It will be noted from our Exhibit "A" that claimant was not required to remain on the rebulletined assignment on April 24 as sufficient advance notice of the change was given to permit claimant to exercise his seniority on this date under Rule 17 (b). In electing to remain on the re-arranged and rebulletined assignment, claimant in effect moved from one assignment to another as contemplated in Rule 23 (3) (b) and (c) and accordingly would not be entitled to the punitive rate on April 24 even if the specific definition of a "work week" were to be disregarded in this case.

The Union Belt submits that Award 5113 is clearly in error and should be reversed as it ignores the definition of a "work week" as established in the rule identical in both disputes, that is the rule entitled "Beginning of the Work Week." The Union Belt submits that other awards which may be relied upon by the petitioner carry decisions predicated upon the Clerks' former Sunday and Holiday rule, a rule which ceased to exist when the short work week became effective on September 1, 1949.

In view of the above, the Union Belt requests that the claim on behalf of Mr. Brownie be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to a position of Zone Clerk, Tuesday through Saturday with Sunday and Monday as rest days. On April 21, 1950, Claimant was assigned by bulletin to work Monday through Friday with Saturday and Sunday as rest days, effective April 24, 1950. This resulted in Claimant having only one rest day (Sunday, April 23, 1950) during the seven-day period here involved.

The Carrier by giving the required notice had the right to change the rest days of Claimant's position under Rule 17 (b). The question is whether in so doing Carrier violated Rules 23 (3) (b) and (c). These two rules provides:

"(b) Work in excess of forty 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 Rule 23 (2).

"(c) Employees worked on more than five 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 furlough list, or where days off are being accumulated under paragraph (g) of Rule 23 (2)."

There was no moving from one assignment to another within the exceptions stated in the foregoing rules. The position was not abolished, the rest

days only were changed in accordance with applicable rules. The exceptions are available to deprive an employee of two rest days within a seven-day period without penalty to the Carrier only when an employee is entitled as a matter of right to accept a new assignment and the Carrier cannot avoid a failure to assign him two rest days in seven. Awards 5113, 5421, 5464, 5494, 5805. Neither can it be argued that the authorized change of rest days affects the operation of Rules 23 (3) (b) and (c) when the occupant of the position acquiesced in the change by declining to exercise his seniority as he had a right to do. This principle appears to have been declared in Awards 2165, 5464. In Award 5586, this Board further said:

"The effect of the qualifying language is to permit the incumbent to elect to treat the position as a new one or as the old one as changed by the Carrier. That is evident from the language of the rule. The rule does not give the incumbent preference in bidding for the 'new' position but provides that she shall retain it. Thus, some vestige of the old position must remain when the incumbent elects to remain, otherwise there would have been nothing to retain. One cannot retain that which is no longer in existence nor retain something which is newly created. We conclude, therefore, with respect to Claimant when she elected to remain on the old position, as changed, she has not moved to a 'new' assignment and hence the exception in Rule 29 (b) and (c) does not apply. (See Award 5113)."

We think the reasoning of the foregoing Awards clearly demonstrates that Rules 23 (3) (b) and (c) were in no manner limited in their operation as to the Claimant. Having worked six days in one work week, he is entitled to be paid at the time and one-half rate for the sixth day.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 27th day of May, 1952.