

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees—

(1) That the Carrier violated the Agreement between the parties, effective May 14, 1948, as amended by Memorandum of Agreement, effective September 1, 1949, when, in establishing a 5-day work week, effective September 1, 1949, Monday to Friday, inclusive, with rest days Saturday and Sunday, for the position of Janitor at Salem, Mass., rate of pay \$10.28 per day, held by Arthur C. Whitehead, a position upon which the nature of the work is such that an employee is needed six (6) days each week by assigning to this position Harold J. Preston, an employee coming within the Scope of the Agreement between the parties, but whose seniority rights are vested on the Terminal Division Freight Handlers' Seniority District (a Seniority District separate and distinct from that of Janitors), on the sixth day (Saturday) September 10th and 17th, 1949.

(2) That the Carrier shall now be required to reimburse Arthur C. Whitehead for two (2) days pay of eight (8) hours each for (Saturday) September 10th and 17th, 1949, at one and one-half times the regular straight time rate of his position (\$10.28 per day) as a result of this alleged violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Effective September 1, 1949, the Carrier established a 5-day work week for Arthur C. Whitehead holding position of Janitor at Salem, Mass., with assigned days of service Monday to Friday, inclusive, with Saturday and Sunday as his days of rest. However, since the nature of the work of the position was such that an employee was needed six (6) days each week, the Carrier covered same on the sixth day (Saturday) September 10th and 17th, 1949, by assigning Harold J. Preston, an employee coming within the Scope of the Agreement between the parties, but whose seniority rights are vested on the Terminal Division Freight Handlers' Seniority District, (a Seniority District separate and distinct from that of Janitors) and who therefore had no seniority rights as a Janitor to perform the work of Mr. Whitehead's position on the sixth day (Saturday) September 10th and 17th, 1949.

POSITION OF EMPLOYEES: There is in effect an Agreement between the parties, effective May 14, 1948, as amended by Memorandum of Agree-

There is no merit in the claim in this docket and it should be denied.

All factual data contained herein and arguments have been brought to the attention of the Employees.

OPINION OF BOARD: Claimant Arthur C. Whitehead, prior to the 40-hour week, held the position of Janitor at Salem, Mass., assigned Monday through Saturday. Effective with the 40-hour week on September 1, 1949, the claimant was assigned the position with a 5-day work week of Monday through Friday. Janitor service was necessary on Saturday, the sixth day. The position was filled on the sixth day by an employee coming within the scope of the applicable agreement but who did not hold seniority rights in the seniority district of the claimant.

The claimant contends that he should have been allowed to perform the janitor work on the sixth day, and by the Carrier's failure to allow him to do the work and using a man from another seniority district, his seniority rights were violated.

The Carrier contends that Preston, a furloughed stower, was entitled to perform janitor work under Rule 17 (f) and Rule 28 (c).

The facts are undisputed that Preston held seniority in a seniority district other than that in which the janitor work in question was performed. It is further undisputed that Preston applied for extra or spare work under Rule 28 (c) which provides as follows:

"Employees who apply for employment in seniority districts other than where employed will be given preference on the basis of seniority, fitness and ability over non-employees and/or employees not covered by these rules. Employees desiring to avail themselves of this provision will make written application to the officer charged with the responsibility of bulletining and assigning positions in the seniority district in which they seek employment."

This last cited rule gives employees preference over only non-employees and/or employees not covered by these rules, but it **does not** give preference over employees in the seniority districts which are covered by these rules and who are available for the work, therefore the contention of the Carrier is not well taken as to Rule 28 (c). This rule does not modify the seniority rule in effect. Where an employee holds seniority rights and is the senior employee available, he is entitled to the work.

The Carrier further contends that Preston was properly given this work under Rule 17 (f). This rule provides:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

This same contention was urged in Award 5553, Case No. 7, and decided adversely to the Carrier. We feel that case was properly decided.

If Rule 17 (f) was to allow employees to cross seniority districts, it would be necessary to specifically say so. This rule talks about "available extra or unassigned employees" with less than 40 hours' work to perform unassigned work and "in all other cases by the regular employee". The only interpretation to be given this rule must be that the employees must be from the same seniority district. Rule 17 (f) must be read in conjunction with the seniority Rule 5 and seniority districts Rule 3 (b).

The claimant was entitled to perform the Saturday work.

The claimant contends he is entitled to be paid for the two Saturdays at time and one-half under Rule 22 (b). This last cited rule contemplates work performed. In the instant case the claimant did not perform the work, therefore he is entitled to be compensated at the pro rata rate.

FINDINGS: The Third Division of the Adjustment Board' upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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 (1) sustained. Claim (2) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.