

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Thomas C. Begley, Referee

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**PARTIES TO DISPUTE:**

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

**THE VIRGINIAN RAILWAY COMPANY**

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

- (1) Carrier violated and continues to violate the current Agreement between the parties dated April 15, 1946, as amended, when it employed individuals outside the scope of the Agreement to relieve Roundhouse Clerk C. H. Gary on his rest days on and after November 11, 1950.
- (2) The Carrier further violated and continues to violate the terms of the Agreement when it failed or refused to call Roundhouse Clerk C. H. Gary to work on the unassigned rest days in preference to persons who were not bona fide employees; therefore,
- (3) Claimant Gary shall be compensated for a day's pay at the time and one-half rate of his regular position for March 17, 1951, and subsequent thereto for each Saturday and Sunday that he was not allowed to perform work on his rest days in preference to such outsiders and the claim to continue until the conditions complained of have been corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to September 1, 1949, the Carrier maintained at its roundhouse, Roanoke, Virginia, the position known as Roundhouse Clerk, with assigned hours 7 A. M. to 3 P. M. seven days per week.

On September 1, 1949, the revised Agreement, embodying the so-called forty hour work week rules, became effective, the Carrier designating the roundhouse clerk's position as in 7-day service, with work days Thursday through Monday, assigned rest days of Tuesday and Wednesday. On October 23, 1950, the rest days on this position were changed from Tuesday and Wednesday to Saturday and Sunday. (Employees' Exhibit "A.") Prior to this change, a furloughed employe with seniority in the Stores Department had worked the rest days on this position under the provisions of Supplement No. 34 dated September 1, 1949.

After October 23, 1950, Claimant Gary worked his rest days at time and one-half until November 11, 1950, when the Carrier employed Mr. E. R.

With evidence as presented above it is impossible to understand how the employe representatives can contend that a man with an employment date under Rule 2(d) is not an employe under the scope of the clerical agreement.

The employes have contended that the carrier did not comply with the terms of Rule 9½(f) and Supplement No. 34 of the schedule agreement. Rule 9½(f) reads:

“(f) Regular Relief Assignments

“All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

“Assignments for regular relief positions may on different days include different starting times, duties and work locations for employes of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving.”

The carrier will not burden this submission by quoting Supplement No. 34 but your Board is referred to page 67 of the current edition of the agreement for this supplement. Both Rule 9½(f) and Supplement No. 34 concern the establishment of regular relief assignments to do the work of six and seven day positions on the rest days of such latter positions. These agreement provisions are not involved because, as the carrier has stated above, the two rest days on the position of roundhouse clerk were the only remaining days not covered by regular relief assignment. There were no other rest days with which to combine to form an additional five day assignment. No suggestion has been made by the employes as to how a relief assignment could be set up to take care of these two “tag end” days nor have they made any request for such an assignment.

The employes have contended that the rest days of the roundhouse clerk were changed on October 23, 1950, so that the carrier could employ Clerk Martin. The fact of the matter is that although the rest days of the position were originally established on Tuesday and Wednesday when the assignment was set up September 1, 1949, shortly thereafter the furloughed clerk who was filling the rest days and Clerk Gary arranged between themselves for Mr. Gary to be off on Saturday and Sunday instead of Tuesday and Wednesday. On October 23, 1950, the rest days were officially changed by bulletin. In view of the fact that there was no longer any reason why the rest days should not be Saturday and Sunday, the change made on October 23, 1950, was in accordance with provisions of Rule 9½(e) which states that “any two consecutive days may be rest days **with presumption in favor of Saturday and Sunday.**” (Emphasis added.)

Thus the carrier has shown that in this case it did not employ an individual outside the Scope of the Agreement to relieve Roundhouse Clerk Gary on March 17, 1951, but, on the contrary, relieved him with the employe whom the Agreement specifically designates shall furnish such relief.

All data in support of the carrier's brief in this case has been furnished representatives of employes, in conference or in correspondence.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant Gary was assigned occupant of position classified as Roundhouse Clerk at Roanoke, Virginia. The position occupied by Claimant is a seven-day position. On October 23, 1949, his two rest days were changed from Tuesday and Wednesday to Saturday and Sunday. November 10, 1950, E. R. Martin was employed by the Carrier under provisions of

Rule 2(d) to perform available work in Group 1 and 2 in Seniority District No. 8. Martin remained in service until November 10, 1951, when he resigned. On December 8, 1951, another student was employed under provisions of Rule 2(d) to perform available work in Group 1 and 2 in Seniority District No. 8. On June 19, 1952, a regular relief position was established.

The Employees state that these two men were students at the National Business College, Roanoke, Virginia, and that in addition Martin was employed by a business firm to keep its books. These men attended school Monday through Friday. The Organization contends that these students were only engaged by the Carrier to work the rest days here in dispute held no seniority, that they were "outsiders."

The Carrier contends that these students were employees and had acquired seniority status. They were properly used under provisions of Rule 11 (j).

The first question to be decided is whether or not these students have acquired employee status. Rule 2 (d) of the Agreement reads as follows:

"(d) Employees hired to perform extra work in Groups 1 and 2 will be given an employment date in the seniority district where hired, as of the first date they perform service, subject to Section (f) of this rule, except that employees hired for a specific term of employment of less than 30 days will not establish any seniority nor any employment date in any group. Extra employees who have established an employment date may exercise rights to bulletined positions in Groups 1 and 2 in the seniority district on which hired, in accordance with their employment date."

Section (f) reads:

"(f) The application of new employees shall be approved or disapproved within 59 days after the applicant begins work. In the event of applicant giving false information, this section will not apply. Applicants will, within 59 days from date of employment, have returned to them all letters of recommendation and other papers which have been furnished by them to the Railway for investigation."

From a reading of this Rule and sections thereof these students became employees of the Carrier with seniority dates.

The next question to be decided is were they properly assigned by the Carrier to the rest days of the Claimant?

Rule 11 (j) reads as follows:

"(j) Work on unassigned days

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 40 hours of work that week; in all other cases by the regular employee."

Reading this rule these employees may be assigned to the rest days.

The Employees have made no showing by the evidence presented that these employees did not hold themselves available to call at all times to protect clerical work, that because they were students that they could not be employed by the Carrier under the terms of the effective Agreement.

This claim must be denied.

**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 Carrier did not violate the terms of the Agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.