Award No. 6258

Docket No. CL-6491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR. CO., THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Palestine, Texas, on April 5, 7 and 8, 1952, when it failed to use Mr. F. C. Connally to perform overtime work. Also

(b) Claim that Mr. Connally be paid for four hours on Saturday, April 5; two hours and forty minutes on Monday, April 7, and two hours on Tuesday, April 8, 1952, a total of eight hours and forty minutes at the rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: Mr. F. C. Connally held position of Assistant Chief Timekeeper No. 257, the duties being:

"Assist in checking train and enginemen time slips, checking operators and clerical overtime slips for passing to station timekeeper. Handling vacations of employes. Assist Chief Timekeeper as necessary."

Mr. T. A. Kennedy held position of Assistant Chief Timekeeper No. 2220, the assigned duties being:

For reasons set forth in the foregoing submission it is the position of the Carrier that the contention and accompanying claim of the Employes is without basis or merit under the governing provisions of the agreement and accordingly should be denied.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced).

OPINION OF BOARD: The basic facts in this case are essentially these. When this claim arose Mr. F. C. Connally, seniority date April 1, 1920, held the position of Assistant Chief Timekeeper No. 257 (Carrier designates it as Assistant Chief Timekeeper No. 1). Mr. T. A. Kennedy, seniority date April 16, 1926, held the position of Assistant Chief Timekeeper No. 2220 (Carrier designates it as Assistant Chief Timekeeper No. 2). Mrs. A. B. Murray, seniority date April 22, 1929, held the position of Assistant Timekeeper No. 258 (Carrier designates it as Assistant Timekeeper No. 1). All three persons were regularly assigned to work 8:00 A. M. to 5:00 P. M., Monday through Friday, with Saturday and Sunday the two assigned rest days. Mrs. Murray was absent from duty on April 3, 4 and 7, and was unavailable for overtime work on April 8; since these dates fell within the busy payroll period overtime work was necessary in order to get the payrolls out. Thus, Mr. Kennedy was worked 4 hours on Saturday, April 5, 2 hours and 40 minutes overtime on Monday, April 7, and 2 hours overtime on Tuesday, April 8, 1952. All of this work was in connection with Mrs. Murray's position, and the record indicates that it was primarily "posting" work.

The Employes contend that on the basis of seniority Mr. Connally should have been used instead of Mr. Kennedy. The Carrier defends its use of Mr. Kennedy on the basis of Rule 45 (b) of the applicable Agreement, which rule provides:

> "In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference;"

The record (Employes' Exhibit "C") discloses Mr. Connally's bulletined duties to be:

> "Assist in checking train and enginemen time slips, checking operators and clerical overtime slips for passing to station timekeeper. Handling vacations of employes. Assist Chief Timekeeper as necessary."

The record (Employes' Exhibit "D") discloses Mr. Kennedy's bulletined duties to be:

> "Assist in checking train and enginemen time slips, post San Antonio enginemen slips, handle distribution, deductions, shortages, vacations, bond statements, etc., in connection therewith. Assist Chief Timekeeper as necessary."

And the record (Employes' Exhibit "B") discloses Mrs. Murray's bulletined duties to be:

> "Post Palestine Division enginemen slips, handle distribution, deductions, shortages, vacations, bond statements, etc., in connection therewith."

It is readily apparent that the only duty performed in common by Mr. Connally and Mrs. Murray is handling vacations. It is equally apparent that while not identical, Mrs. Murray's and Mr. Kennedy's bulletined duties are almost so. Indeed, both these employes are regularly assigned to perform all of the following duties; post enginemen slips, handle distribution, deduc-

tions, shortages, vacations, bond statements, etc., in connection therewith. It can only be reasonably concluded that Mr. Kennedy was regularly assigned to the "class of work" performed by Mrs. Murray—the "class of work" which is the subject of this case. It is difficult to conclude, on the other hand, that Mr. Connally was regularly assigned to the "class of work" in question. The word "class" must refer to "regularly assigned duties", with emphasis on the word "duties". To give the word "class" a broader meaning, if much broader, would be to render Rule 45 (b) a nullity by in effect substituting the word "seniority" for the phrase "employes regularly assigned to class of work". In this connection, the record contains several settlements on the property in which obvious emphasis was placed upon specified **duties** in determining whether the given employe was "regularly assigned to the class of work" for which overtime or extra work was necessary.

Were the conclusion here that both Mr. Connally and Mr. Kennedy performed the "class of work" herein involved, it would be necessary to further conclude that Mr. Connally, as the senior employe, was entitled to the work. Since, however, Mr. Connally was not regularly assigned to the class of work—the duties—involved, such conclusion is not required.

Rule 45 (b) applies by its own terms to overtime work performed "before or after assigned hours". Thus it clearly covers the work performed by Mr. Kennedy on April 7 and 8; the Carrier did not violate the Agreement in assigning the overtime work to Mr. Kennedy on those dates.

Rule 45 (b) does not, however, make reference to work on an unassigned day—Saturday, April 5, in the instant case (Rule 37 (c-1) defines overtime as time in excess of eight hours). Prior to September 1, 1949, Rule 45 (b) read as present with the exception that it then concluded with the provision that "the same principle shall apply in working extra time on Sundays and holidays". Thus, had our present case arisen prior to September 1, 1949, Mr. Kennedy would have been the proper person for the Carrier to call for the Saturday work. Does the 1949 change in Rule 45 (b) require a different result now? It is believed not. The 1949 change was not made to give any additional emphasis to the seniority factor. Rather, the change was made as a result of the advent of the 40-hour week and the resultant incorporation of Rule 37 (c-6) in the Agreement. Rule 37 (c-6) provides:

> "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 employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe."

This rule replaces the provision eliminated from Rule 45 (b) in 1949. But while that provision was eliminated from Rule 45 (b), its essence was **not** removed from the Agreement. Operation of the principle involved in the provision simply is qualified or retarded to the following extent—if there is "an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week", work on unassigned days (Saturday in our case) may be given by the Carrier to such employe **at straight time.** This is the fundamental change made by Rule 37 (c-6). What if there is no such employe who can be worked at straight time? Rule 37 (c-6) gives the answer when it concludes: "in all other cases by the regular employe". As will be hereinafter demonstrated, the phrase "in all other cases by the regular employe" in effect continues the principle involved in the provision which was removed from Rule 45 (b) in 1949—a **principle** which was not removed from the Agreement, but was merely transposed to another part of the Agreement.

It is a cardinal rule of contract interpretation that the Agreement is to be construed as a whole; the meaning of each sentence and each provision must be determined in relation to the Agreement as a whole. In giving meaning to the phrase "in all other cases by the regular employe", as used in Rule 37 (c-6), other parts of the Agreement must be kept in mind. A

"regular employe" is to be distinguished from an "extra or unassigned employe". The regular employe to be used under Rule 37 (c-6) at time and one-half pay where there is no available extra or unassigned employe who the Carrier may use at straight time, is the employe who under Rule 45 (b) would be entitled to the work were it overtime work on a regularly assigned day instead of work on an unassigned day. This conclusion seems inescapable when one remembers that the 1949 change in Rule 45 (b) was made not for the purpose of making a distinction, in the application of the seniority factor as among regularly assigned employes, between overtime work and work on unassigned days; but it was made, in view of the 40-hour week, to permit the Carrier to use certain extra or unassigned employes if available at straight-time rate on unassigned days in lieu of being required to work regularly assigned employes at time and one-half rate.

As was concluded earlier in this Opinion, under the facts of this case Mr. Kennedy was the employe entitled under Rule 45 (b) to the work on April 7 and 8. Since there was no available extra or unassigned employe that the Carrier could use on Saturday, April 5, Mr. Kennedy also was properly called on that day.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Carrier did not violate the Agreement.

AWARD

Claim (a) and Claim (b) both denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1953.