

Award No. 6268
Docket No. CLX-6315

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

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

(a) The agreement governing hours of service and working conditions between the Railway Express Agency, Incorporated and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Worcester, Massachusetts Agency, on March 10 and 11, 1951, in making a run-around on call of J. R. O'Connor, to work as a furloughed employee; and

(b) He shall now be compensated for eight (8) hours pay at pro-rata rate for March 10 and 11, 1951 at Drivers rate of \$65.93 per week.

EMPLOYEES' STATEMENT OF FACTS: J. R. O'Connor, with a seniority date of December 18, 1941, was a furloughed employee, under Rule 19, and as such was available for and ready to perform extra or substitute work on March 10 and 11, 1951, the same as he had been on each and every day during the preceding five (5) day period.

February 26, 1951, Bulletin No. 28 was posted at the Worcester Agency, advertising Relief Position No. 346 (Exhibit A).

March 9, 1951, Appointment Notice No. 8 was posted, awarding Relief Position No. 346 to Employee O'Connor, effective Saturday, March 10, 1951. Relief Position No. 346 is a 5 day position, Monday to Friday, inclusive; Monday (March 12, 1951) being the first bulletined work day. (Exhibit B)

March 14, 1951, Employee O'Connor after having been denied the right to work as a furloughed employee on Saturday and Sunday, March 10 and 11, filed claim for pay for these days, the basis of the claim being that since the position covered by Appointment Notice No. 8 did not actually become effective until Monday, March 12, 1951, he, and not an employee junior to him, should have been permitted to work on the days covered by the claim (Exhibit C).

March 15, 1951, Local Chairman Owen M. Slein wrote General Agent J. A. Grocut, requesting a hearing. However, the hearing was postponed

The "assignment" covered by the Bulletin and Award is controlling. The assignment in the instant case covered by Bulletin No. 346 and Notice of Appointment No. 8, was effective March 10, 1951. March 10, 1951, Saturday, the effective date of the Award and March 11, 1951, Sunday, the rest days on Position No. 346, were part of the assignment of that position.

Employees in the field admitted that the assignment to employee O'Connor of Position No. 346 was effective March 10, 1951, but contended that since physical work on the assignment did not begin until Tuesday, March 12, 1951, O'Connor was still a furloughed employee on March 10 and 11, 1951. That there is no support for such contention under the rules, or under decisions of precedent value, is plainly evident. An assignment is effective upon the date an employee is awarded a bulletined position. This has been the contention of the Employees heretofore, and they have been sustained in such contention in numerous decisions going back to the United States Railroad Labor Board. In Decision No. 304, October 31, 1921, the Labor Board construed Rule 10 of the Agreement between the parties to the instant dispute to require an award to be made immediately after the close of the bulletined period, and sustained a money claim of an employee who was awarded a position on July 31, 1920, but not assigned to it by the Carrier until August 31, 1920.

Express Board of Adjustment No. 1 in bipartisan Decision E-352 dated August 21, 1936, in a case involving several employees at Philadelphia, Pa., held that "The seniority of these employees should be shown on the Roster from the date they were awarded bulletined positions." In Decision E-1071, copy attached, Referee G. Stanleigh Arnold sustained a claim of the Employees that the assignment was effective on the date of the award in a case involving three employees who were awarded bulletined positions effective May 6, 1938, June 15, 1938 and December 12, 1938, respectively, but did not begin work on the positions until May 9, 1938, June 16, 1938 and December 16, 1938. The Referee held that the assignments were effective on the dates of the awards rather than on the dates the employees began work on the positions.

It is clearly evident that the action of Carrier in this case was in strict compliance with all rules of the Agreement and precedent decisions cited. The claim for two days' pay, March 10 and 11, 1951, on the allegation that employee O'Connor was a furloughed employee on those dates is entirely without merit and should be denied.

All evidence and data have been considered by the parties in correspondence and conference. (Exhibits not reproduced.)

OPINION OF BOARD: The facts as presented to the Board, brings us to the only question to determine as to the meaning and interpretation of Rule 45-A of the current Agreement between the parties.

Briefly stated, the Employee J. R. O'Connor, was a furloughed employee on and prior to March 9, 1951, and was available for duty under Rule 19 of the Agreement.

The record shows that on February 26, 1951, Carrier posted Bulletin #28, advertising Relief Position #346, which position was bid in by the employee, and on March 9, 1951, Appointment Notice No. 8, was posted, awarding the position to the employee, effective date March 10, 1951. The position as bulletined, awarded the employee allowed rest days on Saturday and Sunday and covered a five-day work week as provided by the 40-Hour Week National Agreement.

The employee with seniority date of December 18, 1941 was a furloughed employee under provisions of Rule 19 of the current Agreement, at the time he made a successful bid for position #346, as set out in Bulletin #28, posted by Carrier on February 2, 1951. On March 9, 1951, Carrier posted Appointment Notice #8, showing the employee J. R. O'Connor was successful bidder

and was awarded position #346, with effective date shown for the position as March 10, 1951.

The Organization contends that since the physical work on the position awarded, did not begin until Monday, March 12, 1951, due to rest days of the position being Saturday and Sunday, March 10 and 11, 1951, Carrier violated the Agreement, by its failure to allow the employee to work Saturday and Sunday, March 10 and 11th, and take the position he had, the status of a furloughed employee, until he began his actual employment as a regular employee on March 12, 1951. Therefore, we are called upon to determine the force and effect of Rule 45-a, and whether or not a furloughed employee ceases to be a furloughed employee when he becomes a regularly assigned employee, on the effective date stated in the Notice of the Appointment, or does he cease to be a furloughed employee as of the date the work actually begins. Under the facts in the record, there is no question that if the employee was in the status of a furloughed employee, the claim should be sustained, as presented.

Carrier contends the employee on March 9, 1951, at the time of posting of the Appointment Notice #8, changed his status from that of a furloughed or unassigned employee to that of a regularly assigned employee, and cites Express Board of Adjustment cases in support thereof. The record discloses, and the Organization contends, that as a furloughed employee O'Connor should have been allowed to work March 10 and 11th, since he had not worked five full days during that week. The record page 31 shows he worked Monday, March 5, and on the next four days, was called to work by Carrier but was not available. Certainly it was through no fault of Carrier that he did not work five days prior to March 10.

Under the facts and Decisions cited, the Board is of the opinion that Claimant; an unassigned and furloughed employee, became a regularly assigned employee at the time the Notice of Appointment was posted by the Carrier on March 9, 1951, showing effective date of the position as March 10, 1951, and that his rest days being Saturday and Sunday, he was not entitled to work on the days claimed.

The claim as presented is without merit and should 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 Carrier did not violate the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 17th day of July, 1953.