

**Award No. 6382**

**Docket No. CL-6301**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Peter M. Kelliher, Referee**

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**PARTIES TO DISPUTE:**

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY**

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

(a) Carrier violated the rules of the Supplemental Agreement effective September 1, 1949, when it failed to properly compensate an employes for service rendered on his assigned rest days; and

(b) R. D. Rose shall now be paid the difference between time and one-half and the straight time he was allowed at Storehelper rate, for service performed on January 21, and 22, 1950, his regular assigned rest days.

**EMPLOYEES' STATEMENT OF FACTS:** On the date the instant claim arose, Mr. R. D. Rose was the regularly assigned occupant of a Trucker Position in the Store Department at Arkansas City, Kansas, with assigned hours 8:00 A.M. to 5:00 P.M., five days per week, Monday through Friday, rest days Saturday and Sunday. During his work week beginning on Monday, January 16, 1950, Mr. Rose worked his Trucker Position on each of his regularly assigned days, January 16, 17, 18, 19 and 20, 1950.

On Saturday, January 21, 1950, Mr. Roy Mathews, the regularly assigned occupant of Storehelper Position No. 10 in the same seniority district reported ill and unable to protect his regular assignment 11:00 P.M. to 7:00 A.M. on that date, thus creating a temporary vacancy on Position No. 10, which vacancy, if to be filled, was subject to the provisions of Article III, Section 10-a, of the current Clerks' Agreement.

Carrier elected to fill this vacancy and, there being no off-in-force-reduction employe available, called Mr. R. D. Rose, who was off duty on his regular assigned rest day, to report and protect this temporary vacancy and compensated him at the pro rata rate for the service he performed on his two rest days, January 21 and 22, 1950, instead of compensating him at the penalty rate of time and one-half as required by the rules.

As in the case covered by Award 5798, the rights which the claimant, Mr. Rose, in the instant dispute, had to his rest days by virtue of his regular assignment to trucker position No. 14 cannot rightfully be imposed as a burden on the Carrier's obligation to give him the work of protecting the Class 3 vacancy on the Storehelper Position No. 10, to which he was entitled under Article III, Section 8-c of the agreement in effect between the parties hereto. Mr. Rose relinquished any rest day rights he had as the regular occupant of trucker position No. 14 when he exercised his right under Article III, Section 8-c of the agreement, to make application for and accept the vacancy on storehelper position No. 10. In exercising his rights under the aforementioned agreement rule to fill the vacancy, Mr. Rose assumed the conditions of storehelper position No. 10, including the rest days thereof and since Saturday and Sunday, January 21 and 22, 1950 were not the rest days of the storehelper assignment, it cannot rightfully or properly be said that the service performed by Mr. Rose on January 21 and 22, 1950 was service rendered on his assigned rest days.

While the dispute covered thereby did not involve a move from one assignment to another, as in the case in the instant dispute, the Board's attention is also respectfully directed to the following conclusion rendered by the majority in Third Division Award No. 5807 with regard to agreement rules similar to those identified herein as Article VII, Sections 1-b and 1-c:

"The exceptions are available to deprive an employe of two rest days within a seven-day period without penalty to the Carrier only when an employe 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."

The above quoted conclusion of the majority in Award 5807 clearly supports the Carrier's position in the instant dispute that since Mr. Rose was entitled, as a matter of right under Article III, Section 8-c of the governing agreement, to apply for and accept the vacancy on storehelper position No. 10, the Carrier could not avoid assigning him to the vacancy and he was accordingly moving from one assignment to another within the meaning of Article VII, Sections 1-b and 1-c and was not entitled to time and one-half for service performed on Saturday and Sunday, January 21 and 22, 1950, as contended by the employes.

The Carrier respectfully asserts that a sustaining award in the instant dispute would have the effect of nullifying the provisions of Article III, Section 8-c and Article VII, Sections 1-b and 1-c of the agreement in effect between the parties hereto and would be violative of the authority of the Board which was so aptly described in the "Opinion of Board" in third Division Award 4126 as follows:

"It is axiomatic that your Board will not make agreements for the parties; nor will it unmake them".

In conclusion, the Carrier respectfully submits that the claim of the Employes in the instant dispute is entirely without support under the Agreement rules in effect between the parties and should be denied in its entirety.

All that is contained herein is either known or available to the Employes and their representatives.

(Exhibits not reproduced)

**OPINION OF BOARD:** Article VII, Section 1-f, is controlling. The claimant rendered service on his "assigned rest days." He was relieving an employe "assigned to work" on such days. The claimant "rendered service on five previous days in his work week", and he was entitled to be paid at the rate of time and one-half. Under the facts in this case the claimant clearly met all of the conditions set forth in Article VII, Section 1-f. If this provision is to

have any meaningful purpose in the "SUPPLEMENTAL AGREEMENT" it must be given effect in this case. It is a universally accepted rule of contract construction that special rules prevail over general rules.

Article VII, Sections 1-b and 1-c, set forth the general rule that employees who work more than 40 straight time hours or more than 5 days in a work week shall be paid one-and-a-half times the basic straight time rate. The Carrier maintains that the facts in this case are covered by the exception to that general rule by assertion that the claimant performed his work "due to moving from one assignment to another."

From a reading of the Agreement as a whole the Board must find that the aforementioned phrase is applicable only where a regularly assigned employee moves from one assignment to the other in the exercise of seniority bidding or displacement rights. In such a case the employee relinquishes all claims to his former assignment and acquires rights to the assignment which he bids in or displaces on. The claimant in this case retained his regular assignment and did not acquire rights to the position on which he was temporarily relieving a regularly assigned employee. Article III, Section 8-c, is limited by its terms only to the filling of "Vacancies and/or new positions in Class 3." Section 10-a, of that article provides for the filling of "Vacancies of fifteen (15) calendar days or less duration." It is not limited by its terms to Class 3 vacancies. Article VII, Section 1-f, is not restricted to situations where employees are arbitrarily instructed or otherwise required to perform service. The Board cannot read such language into the provision.

**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

The the Agreement has been violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois this 23rd day of October, 1953.