

Award No. 6401

Docket No. CL-6269

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon—Referee

PARTIES TO DISPUTE:

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

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

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

(1) That Carrier violated Rules of the Clerks' Agreement commencing with application of the Forty Hour Week Rules effective September 1, 1949, when it failed to properly apply the provisions of said Forty Hour Week Rules, in conjunction with other Rules of the General Agreement, in affording required relief service on clerical positions in the Superior, Wisconsin Roundhouse.

(2) That the involved employee (s); namely C. U. Neal (and his successor or successors) Third Shift Clerk, Superior, Wisconsin, Roundhouse, be allowed an additional day's pay at rate of time and one-half as wage loss sustained for Thursday October 6, 1949, and all subsequent relief days of each succeeding week to and including February 9, 1950, that his (their) position was not filled in conformity with rules of the Agreement and that the involved employee (s) Duane Cadotte (and his successor or successors) Second Shift Caller, Superior, Wisconsin Roundhouse be allowed an additional day's pay at rates of time and one-half as wage loss sustained on Thursday, February 16, 1950, and all subsequent relief days of each succeeding week that his (their) position was not filled in conformity with rules of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the clerical force in the Superior Roundhouse was assigned around the clock seven days per week. Effective with application of the Forty Hour Week Rules, October 3, 1949, Carrier established the following:

Name	Position	Hrs. of Service Assignment	Rest Days
H. E. Hansen	Roundhouse Clerk	7:30 am to 3:30 pm	Sat. & Sun.
V. H. Johnson	Clerk-Caller	3:30 pm to 11:30 pm	Mon. & Tues.
Clyde Neal	" "	11:30 pm to 7:30 am	Wed. & Thurs.
R. Roulston	Relief	7:30 am to 3:30 pm— 3:30 pm to 11:30 pm— 11:30 pm to 7:30 am—	Thurs. & Fri. Sat. and Sun. Mon. Tues. & Wed.

Neal. In Award 5078 it involved a claim on the Erie Railroad involving the right of the Carrier to use relief workers as provided in the Forty Hour Week rules. In this case freight handlers were hired for one day and they were not considered what might be termed "regular relief employees." A freight handler so hired would never obtain seniority since laborers did not establish seniority until after six months. In this particular case the Erie Railroad had a rule requiring regular relief assignments for five days and freight handlers were not excepted from this rule. Since the factual situation in this case is entirely different than the facts in our claim it does not support the position of the Organization.

Award 5240. In this case employees did not establish seniority until assigned to a position or vacancy which had been bulletined. Carrier did not bulletin the relief work for the reason that had they done so it would have been liable to a guarantee rule and there is no guarantee rule on the Soo Line for relief clerks.

The Organization also cited Award 5558 claiming that this dispute was identical to the facts in Award 5558. It was pointed out to the employees that the factual situations were entirely different. Our agreement does not provide for a guarantee for relief workers while on the B&M a guarantee rule was applicable and as a result of this their relief positions of less than five days was not sustained by reason of Rule 17½(e) which obligated the B&M to establish relief positions of five days.

In summarizing the position of Management, we have shown that when this position was reduced to a five day assignment in accordance with provisions of Rule 41½(a) the work necessary to be performed on rest days was given to a relief employee to comply with Rule 41½(e) and since no guarantee is applicable to relief workers it was permissible for the Carrier to assign a relief clerk with less than five days of work.

Rule 50(f) on which the claimants rely does not support them. The two designated rest days on Neal's position were not a part of Neal's assignment but on the contrary, were a part of two regularly assigned relief clerk's assignment. Therefore, Rule 50(f) is not applicable.

The contention that we employed a non-employee without seniority cannot properly be supported. Rule 3(a) gives Cadotte employee status and further Rule 16 gives the Carrier a contractual right to make appointments when there are no bidders.

In Award 5558 your Board stated that they would not permit hiring of workers "off the street" unless the controlling agreement included such a provision. The agreement on the Soo Line specifically so provides.

It is the position of the Carrier that we have carried out the intent, spirit and rules of our agreement of June 1, 1945 and as amended September 1, 1949, and that claimant Neal has no rights under the agreement to claim work in his behalf on designated rest days.

It is the position of the Carrier that claim is not supported by the rules and we respectfully suggest to the Board that the claim be denied.

All data submitted in support of our position has been presented to the claimants. (Exhibits not reproduced.)

OPINION OF BOARD: This docket involves claims for additional day's pay at the one and one-half time rate, for Third Shift Clerk, Roundhouse, position at Superior, Wisconsin, for each day, Thursday, one of the rest days of said position, that Carrier filled the position with relief employees, between Thursday, October 6, 1949 and Thursday, February 16, 1950, not entitled to such work under the provisions of the current Agreement or the 40 Hour Week National Agreement, effective September 1, 1949, and that

as a result of such action Carrier has violated the Agreements and should compensate such employes at the time and one-half rate for each Thursday, relief day, Carrier permitted employes to fill such relief position, between the dates above enumerated. It is the position of the Organization that Carrier used persons not bona fide employes to fill the relief position, when the regularly assigned employee was available but was not used.

Carrier contends that with the advent of the 40 Hour Week National Agreement, which became effective September 1, 1949, the position involved herein was reduced to a five-day assignment, and the work to be performed on the rest days was assigned to relief employes, as provided by Rule 41½(e) of the National Agreement. There being no guarantee rule in the Agreement applicable to relief positions, Carrier takes the position it is permitted to assign relief clerks with less than five days of work. Therefore, Carrier contends the relief positions were filled in compliance with the provisions of the agreement and the 40 Hour Week National Agreement, and denies any violation thereof.

The Organization relies on the proposition that the relief positions filled by Cadotte, Johnson and C. U. Neal were in violation of Article 3, Rule 3 of the Agreement, and they state that the three named persons were not bona fide employes within the meaning of this rule. We cannot agree with this contention, and must hold that Cadotte, Johnson and C. U. Neal were employes of the Carrier, but did not attain seniority until after completing thirty work days. The fact they had no seniority under the Clerks' Agreement does not mean they were not employes. This rule is clear and concise in its provisions, and this Board has held in many Awards on a similar proposition. The more recent Awards have laid down this principle and are controlling in the case before us. See Awards 6089, 6094, 6174. It is admitted in the record that both Cadotte and Hanson were roundhouse laborers, and as such worked under another Agreement. But it is also admitted these two employes were only working four days a week under the roundhouse assignment; their fifth day they filled the relief position in the case before us, described as a tag-end and rest day relief. This the Clerks contend is not permissible under their Agreement. Both Cadotte and Hanson had acquired relief employee status under the Clerks' Agreement, as we have held above, and under Rule 50(f) of the 40 Hour Week Agreement, Carrier was permitted to use such relief employes and since they were available extra employes, Carrier was not obligated to use the regular assigned employee.

As to the contention that C. U. Neal was an outsider, and not a bona fide employee as claimed, we hold there is no merit to such contention by the Organization, and as applicable in supporting our holding that C. U. Neal was a bona fide employee, we refer to what we said in Award 6089, which is most appropriate and similar to the conditions here before us.

The Board, therefore, holds that the action by Carrier was wholly permissible under the provisions of the Agreement and 40 Hour Week Agreement, and the position by the Organization that the Carrier violated the Agreement is not supported by the record.

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 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

That Carrier has in no manner violated either the Agreement or 40 Hour Week National Agreement, and the claim should be denied.

AWARD

Claim denied in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.