

Award No. 6559  
Docket No. CL-6383

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

William M. Leiserson, Referee

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**PARTIES TO DISPUTE:**

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
PERE MARQUETTE DISTRICT**

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

(a) The Carrier violated the Agreement effective August 1, 1947, and as amended effective September 1, 1949, when it violated said agreement by using a person who has no seniority under the Clerks' Agreement to perform service as a telephone switchboard operator in the Superintendent's Seniority District No. 24, Grand Rapids, Michigan.

(b) Claim that Mrs. Shirley VanDam, the senior and regular assigned telephone operator be compensated a day's pay at the rate of time and one-half for each Saturday commencing April 5, 1952, until the violation was corrected.

**EMPLOYES' STATEMENT OF FACTS:** The switchboard operators employed who appear on the 1952 seniority roster are as follows. Also, the assigned hours of each operator is shown.

1. Shirley Van Dam	7:00 A. M. to 3:00 P. M.	Feb. 1, 1927
2. Ellen Dwelle	3:00 P. M. to 11:00 P. M.	May 29, 1930
3. Beatrice VanVolkenburg	9:00 A. M. to 5:00 P. M.	Dec. 18, 1945
4. Mildred Fiscus		June 20, 1951

Effective with the 40-hour week the telephone operators were assigned to a Monday through Friday work week, with Saturday and Sunday as rest days. Telephone switchboard service being required on Saturdays from 8:00 A. M. to 4:00 P. M. the relief operator whose name appears above worked on Saturdays, this employe being one who did not work forty hours a week. When Mildred Fiscus left the service of the Carrier, a Miss N. Baltutat, who holds no seniority rights under the agreement, was employed to perform service on Saturdays.

**POSITION OF EMPLOYES:** There is in evidence an agreement between the parties, effective August 1, 1947, amended effective September 1, 1949, from which the following rules are quoted in whole or in part for ready reference:

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant is one of three regularly assigned switchboard operators at Grand Rapids, Michigan, all of whom work Monday through Friday, and have their rest days on Saturday and Sunday. The office is closed on Sunday, but one operator is needed on Saturday, and before this claim was filed an extra employee (Fiscus) did this Saturday work as well as other extra work. This employee resigned on March 29, 1952, and the Carrier hired another employee (Baltutat) to take her place. Baltutat filed an application on April 4, and she was used on Saturday, April 5, and succeeding Saturdays until June 28, 1952, when the Carrier ceased giving her the Saturday work. During this period she also did extra work on other days of the week, and she continued to do such work after June 28. The evidence shows that in September, 1952, she was still relieving switchboard operators during their vacations and absence for other reasons.

The Employees charge that the Carrier violated the Clerks' Agreement "by using a person who has no seniority . . . to perform service as a switchboard operator . . ." and the claim is that the senior regularly assigned operator be compensated at the rate of time and one half for each Saturday worked by Baltutat who had no seniority.

The Carrier denies any violation, contending that Baltutat had status as an employee, and as such she could be used to do extra work on Saturdays as well as on other days, even though she held no seniority.

Rule 3 of the Agreement that was in effect at the time the dispute arose distinguished between seniority and employee status as follows:

"(a) Subject to Rule 52, an individual acquires an employee status at the time his pay starts. (Rule 52 deals with validating records of applications for employment which must be approved or disapproved within 60 days.)

(b) Seniority begins at the time an employee is assigned by bulletin in accordance with this agreement to a position in the seniority district and group where assigned."

The Employees argue: "It is obvious that Carrier hired Miss N. Baltutat to perform relief work on one day each week in violation of Rules 1, 3, 7 and 25(5). Inasmuch as she was not an 'extra or unassigned' employee as that term is understood in Rule 25(5). It follows that in the absence of a bona fide available extra or unassigned employee who would not otherwise have 40 hours work in the week here in question, the Carrier was obligated to call Claimant on her rest days of each week to perform the work."

We find that the facts in the case do not bear out these statements. The record shows that Baltutat was not hired solely for the purpose of working one day a week, Saturday. She relieved the assigned switchboard operators on other days of the week as well, in the same manner that her predecessor, Fiscus, had done before resigning. Under Rule 3(a) she had status as an employee. As such she was covered by Rule 1, the scope rule of the agreement, and when she relieved other switchboard operators during their absences or worked on Saturday, which was an unassigned day, she was governed by the pay and hour rules and other provisions of the Agreement. Like her predecessor she was hired and used as an extra employee, though under Rule 3(b) she could not attain seniority until she was assigned to a bulletined position.

The employees stress the fact that Fiscus did have seniority, and their contention is in effect that an employee with status as such, but without seniority, may not be used to do extra work on days that are not a part of any assignment. Nevertheless, they do not contend that the Agreement was violated when the Carrier used Baltutat to relieve the regularly assigned switchboard operators when absent on vacations or for other reasons.

Nor did they protest while Fiscus did the same when Fiscus had no seniority, but only status as an employee, to relieve on bulletined assignment during absences of their occupants. The evidence shows that Fiscus, when she was an employee with status only, also was used to do available extra work on Saturdays as well as other days. Her seniority date was June 20, 1951, but she was hired about six months earlier, on January 23, 1951. During this period, before she acquired seniority, she worked as an extra, without protest from the Employees, in the same way that Baltutat did extra work between April 5 and June 28, 1952. If the Agreement thus permits employees with status only to relieve on regular assignments during absences of the occupants who hold seniority, it cannot be held that they are not permitted to work on days not part of any assignment such as the Saturdays here involved.

Had Baltutat been hired for the Saturday work only, as was erroneously alleged, there might be some question as to whether she had status as an employee on the first Saturday, April 5. But on the facts and the Agreement in this case we must hold that she was a bona fide extra employee who, under Rule 25(5), could be used by the Carrier for the Saturday work rather than the regularly assigned employee.

This rule states clearly that work "on a day which is not a part of any assignment, 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 employees." It is not disputed that the Saturdays here involved were not part of any assignment, and both parties rely on this rule. Nor do the Employees claim that extra employee Baltutat had 40 hours work during the weeks on which she worked Saturdays. Accordingly the Carrier properly gave her preference to perform the work over the regularly assigned employees, as the rule provides.

Many awards were cited by the Employees in support of their position on the assumption that "The question at issue is whether or not the Carrier has the right to hire a person 'off the street' to relieve regularly assigned employees one or two days per week." Those awards are not applicable to the present case, since Baltutat was hired as a bona fide employee to replace Fiscus who had resigned. In Awards 5558 and 6259 it was explained that "We do not hold that the Carrier cannot augment its forces when need therefor arises," and in the case here there was plainly a need for a new extra employee to replace Fiscus who had resigned.

Other awards relied upon (e.g. 5078) dealt with the provision such as in Rule 3, that "Positions referred to in this agreement belonged to the employees covered thereby, and no work shall be removed from this agreement." These too are not applicable to the instant dispute, for the Saturday work was not a part of the bulletined assignment of the regular switchboard operators. This work did not "belong" to them. It was not removed from the Agreement, but admittedly was governed by Rule 25(5), and Saturday being an unassigned day, the rule authorized the Carrier to use the extra employee who would not otherwise have 40 hours work during the weeks in question.

We find that the Carrier did not violate the Agreement, and the claim cannot be sustained.

**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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1954.