

Award No. 6561

Docket No. CL-6486

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

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

(a) The Carrier violated the Agreement when on February 16, 1950, it required Clerk R. C. Myers to vacate his position as Switching Clerk in Gest Street Terminal Freight Office at Cincinnati, Ohio, which worked from 7:00 A.M. to 3:00 P.M. Monday through Friday of each week to work Relief Clerk position which worked Thursday through Monday of each week with Tuesday and Wednesday as rest days.

(b) That Claimant R. C. Myers be compensated for the difference in pro rata rate and time and one-half rate for February 18, 1950 and February 19, 1950 account being required to leave his regular assigned position and fill a temporary assignment of Relief Clerk that required him to work on his regular assigned rest days of Saturday and Sunday at pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: The Claimant is an employee holding seniority in Group 1 (Clerks) on the Seniority District of The Cincinnati, New Orleans and Texas Pacific Railway Company, with a seniority date of May 8, 1923 and assigned to a regular position of Switching Clerk. The Claimant was assigned to a work week of Monday through Friday, the hours of assignment 7:00 A.M. to 3:00 P.M., and on February 16, 1950 was required by officer in charge to leave his regular assignment and work position of Relief Assignment which worked Thursday through Monday with off days Tuesday and Wednesday and by doing so was required to work his regular assigned rest days of Saturday and Sunday at pro rata rate.

POSITION OF EMPLOYEES: There is in evidence an amended Agreement between the Parties bearing the effective date of October 1, 1938, revised and reprinted as of March 1, 1944; employees submit that the Agreement was violated and quote the following Agreement rules in support of their position:

ARTICLE I.

Scope—Rule 1 reads in part as follows:

vacated such assignment by moving to the assignment of relief clerk on Thursday, February 16, after which he worked five days on the assignment of relief clerk, then observed the rest days of such assignment. This he did for three weeks after which he returned to his former assignment. Furthermore, he moved from one assignment to another within the meaning of that term as used in Rule 10 (b) of the effective agreement when moving from the assignment of switching clerk to the assignment of relief clerk on Thursday, February 16, and when moving from the assignment of relief clerk to the assignment of switching clerk on Thursday, March 9.

In the circumstances, the claim which the Brotherhood is here attempting to assert on behalf of Clerk Myers cannot be valid and carrier respectfully requests that the Board so hold.

All relevant facts and arguments involved in this dispute have heretofore been made known to the employee representatives.

OPINION OF BOARD: Claimant holds a regular assignment as a switching clerk, working Monday through Friday with rest days on Saturday and Sunday. There are several other assigned clerks in the same office including one regularly bulletined relief assignment which works Thursday through Monday with assigned rest days on Tuesday and Wednesday.

On February 16, 1950, the occupant of this relief assignment was given leave of absence to have an eye operation, and he did not return to work until March 9. The Agent in charge of the office asked claimant to fill the temporary vacancy and claimant consented, though he states "without the understanding that I would not be paid time and one-half for any time worked after I had worked my 40 hours."

Claimant worked his switching clerk assignment Monday, Tuesday and Wednesday, February 13, 14 and 15. On Thursday, February 16, he transferred to the relief assignment and worked the five days of this assignment through the following Monday, taking its rest days off on Tuesday and Wednesday. He thus worked eight consecutive days—3 on one assignment, 5 on the other before he got these rest days. Because Sunday and Monday (Feb. 18 and 19) were rest days of his switching clerk assignment he claims the difference between time and one-half for these two days and the straight time rate that he was paid.

The Employees allege that the Carrier violated the seniority and bulletining rules of the Clerks' Agreement by "requiring or permitting a regular assigned employee to vacate his regular position and temporarily move to vacancy caused by other employee being absent * * *". This resulted, they say, in "such employee being required to work more than five (5) days in a work week because the rest days of the position to which transferred is different from the rest days on his regular assignment"; and they argue that Rule 10 (b) of the Agreement does not permit the Carrier to compensate such employee at pro rata rate when worked in excess of five (5) days or forty (40) hours in a work week. They also rely on Rule 33 (d) to support the claim.

We cannot agree that the seniority and bulletining or assignment rules were violated. The Carrier cites one of these rules (5 (d)) which specifically gives the Management discretion to blank a temporary vacancy, or to fill it, provided preference is given to an employee holding seniority in the group or class. The pertinent part of this rule stipulates that "temporary vacancies up to ninety (90) days, when occasioned by absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge." And a note to the rule adds: "When such temporary vacancies are filled, * * * preference for such work shall be given to employees holding seniority in group or class in which vacancy occurs."

Admittedly no other qualified employee was available to fill the temporary vacancy, and the Claimant held seniority in the group or class. The record is clear that the Carrier's Agent asked him to fill the temporary vacancy on the relief assignment, and that the Claimant voluntarily consented. He states in a letter to his local chairman that he did consent when he was told no one else with necessary carload rate experience was available, but that he had no understanding it would not be paid at the overtime rate after he had worked "my 40 hours." This statement did not change his consent. It goes only to the question whether he is or is not entitled to overtime pay for the two days claimed; and that question must be determined in accordance with the applicable rules of the Agreement.

Although there was some argument as to whether the claimant might have been disciplined if he had not agreed to move temporarily to the relief assignment, that issue is not involved in the present case. The Carrier having the authority under Rule 5 (d) to fill the vacancy as it did, and the Claimant having accepted the temporary assignment, the charge that the seniority and bulletining rules were violated is not valid.

The claim that Rule 10 (b) requires payment of the overtime rate for Saturday and Sunday, February 18 and 19, is also not valid. This rule does require such payment for service in excess of 5 days or 40 hours "in a work week." But the Claimant did not work in excess of 5 days or 40 hours in any work week during the period between February 13 and March 9, 1950, with which we are here concerned. He worked only 3 days or 24 hours of the work week on his switching clerk assignment from Monday the 13th through Wednesday the 15th. He did not work the last two days of this work week and he did not get the rest days of that work week because on Thursday the 16th he transferred to the relief assignment where he worked three full weeks. In each of these weeks he worked 40 hours, Thursday through Monday, and was off Tuesday and Wednesday, the bulletined rest days of this assignment.

The term "work week" for regularly assigned employees is defined in the Agreement to "mean a work week beginning on the first day on which the assignment is bulletined to work." Thus when claimant moved to the relief assignment, he began a new work week on Thursday, and the following Saturday and Sunday were work days on this assignment while Tuesday and Wednesday were its assigned rest days. He took these rest days, and therefore he was properly paid straight time for Saturday and Sunday. He was no longer working his switching clerk assignment and not entitled to the rest days of that assignment. There is no claim here for the second and third week that he worked Saturday and Sunday on the relief assignment, and he is no more entitled to overtime for these days during the first week than he would be for the other two weeks.

This Division has repeatedly ruled that the specified rest days are an integral part of the work week of each bulletined assignment, that they are not attached to the individual employee so that he may carry them with him as he moves from one assignment to another. Moreover, Rule 10 (b) specifically excepts the payment of overtime rates for service in excess of 5 days or 40 hours "where such work is performed by an employee due to moving from one assignment to another." And the Claimant in this case clearly moved from his regular switching clerk assignment to fill the temporary vacancy on a different assignment.

As for Rule 33 (d) on which the Employees also rely, this is not applicable to the present case, for it deals with service rendered by an employee on his rest days relieving another employee who is assigned to work eight hours on such days. The Claimant here was not used on his rest days to relieve another employee. He took over for three weeks a complete assignment including both work days and rest days.

For the reasons stated, the claim must 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 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

Agreement 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.