

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway Clerks:

(1) That Carrier violated Agreement—current issue dated January 1, 1950—when on or about August 23, 1953, it arbitrarily changed a practice that had been in effect for many years prior thereto of calculating time and pay for regular employees in the St. Louis Union Station Ticket Office called in emergencies to fill vacancies caused by absence of other regular employees.

(2) That Carrier be required to restore the practice that was in effect for many years prior to August 28, 1953, and reimburse all employees adversely affected since that date including Harry Schulmann, Ticket Seller-Clerk, for one and one-half hours' pay at overtime rate for service performed outside the assigned hours of service of the absentee in whose place he worked, namely, one and one-half hours at overtime rate for services performed from 3:45 P. M. to 5:15 P. M. August 28, 1953.

EMPLOYEES' STATEMENT OF FACTS: For an indeterminable period of time preceding the effective date of our current Agreement with Carrier—January 1, 1950, when employees in the St. Louis Union Station Ticket Office were called on their rest days to fill the places of others absent account sickness or emergencies. It was the practice for the employee called to respond and report for duty as soon as possible to fulfill the assignment of the absent employee for which service he was paid a minimum day irrespective of the actual time worked. This practice was arbitrarily set aside by Management in the following instance:

Ticket Clerk C. A. Vahey is regularly assigned to a 7 A. M. to 3:45 P. M. shift in the St. Louis Ticket Office. He is ordinarily relieved at the Ticket Counter, Window No. 9, by a second shift Ticket Seller, Edward Bender, at 3 P. M. From 3 P. M. to 3:45 P. M. his assignment requires that he prepare his daily reports. Mr. Schulmann also is a Ticket Seller on a day shift assignment, 7 A. M. to 3 P. M. at which time he is relieved by a second shift worker. From 3 P. M. to 3:45 P. M. he also is assigned to prepare his daily reports. All such assignments alternate weekly.

be performed, while in others, such as the instant one, where there was additional work to be performed, the employee has been worked eight hours for which he is paid. There is no rule in the agreement that provides that an employee called on his rest day to work in place of an absent employee can only be worked the assigned hours of the absentee and such an interpretation of the rules could not be established by practice even if that practice were in effect.

The Carrier's obligation under the first paragraph of Rule 40 requires that employees notified or called to perform work not continuous with, before or after the regular work period shall be paid a minimum of three hours for two hours' work or less. When so used the employee's pay starts at the time he starts work and there is no question concerning the Carrier's right to obtain two hours' service from the employee; in other words, he is paid for the actual time on duty with a minimum of three hours' pay. However, in the application of the second paragraph of Rule 40, if such service is required on an employee's rest day or on a holiday he must be paid a minimum of eight hours (instead of three as in the first paragraph). The Organization argues that the eight hours paid Mr. Schulmann runs concurrently with the hours of the assignment of an absent employee, but such argument is not supported by rules of the agreement. In fact, Paragraph (b) of Rule 39 provides that work in excess of forty straight-time hours shall be paid for at one and one-half times the basic straight-time rate, therefore payment for Mr. Schulmann's services can only commence at 8:39 A. M., the time he started to work, and continue to 4:52 P. M., the time relieved (less forty-five minutes for lunch), or a total of 7 hours 28 minutes on duty for which he was paid eight hours at the overtime rate. To compensate him additionally for work of less than eight hours amounts to double payment for the same hours or overtime on overtime, which is strictly prohibited by Paragraph (d) of Rule 39.

There is no valid basis for the claim and it should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was called on one of his designated rest days to work the position of an absent ticket clerk. The regularly assigned hours of the position for which called are 7:00 A. M. to 3:45 P. M. On completion of that tour of duty, which, incidentally, did not start until shortly after 8:30 A. M. on the day in question, due to the lateness of the call Claimant was required to remain on duty approximately an hour and thirty minutes beyond the 3:45 P. M. quitting time to work at another ticket window. He was paid 8 hours compensation at punitive rate for approximately 7 hours and 30 minutes working time. The record shows he was released at 5:15 P. M. and claim is for one and one-half (1½) hours additional compensation as overtime.

There are certain technical aspects of the docket which must be brushed aside in order to get to the real basis for the dispute.

The Employees assert that Rule 40 is subject to a practice by which the person called to fill an assigned position of an absent employee works according to the conditions of the assignment; that when Claimant was not released at 3:45 P. M., service performed thereafter was subject to the overtime rules of the Agreement, the same as if the regularly assigned employee had been required to remain on duty after his scheduled quitting time.

The Carrier argues for a literal application of Rule 40 and cites in conjunction therewith Rule 34 reading:

"Except as otherwise provided herein, eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work."

Therefore, the Carrier's position is that Claimant, on the day in question, had no assignment and could be called and be caused to perform "eight (8) consecutive hours" service at whatever tasks assigned as "a day's work" so long as grievant receives a minimum of eight (8) hours pay at the time and one-half rate.

Carrier also asserts as another reason for denying the claim that Board Award 4550 no longer is in effect on the property in view of the fact that the rule at issue in that docket is not now operative. In the cited Award this Board ruled, in effect, that a position necessary to continuous operations could not be blanked in whole or in part.

We think the Carrier correctly construes the earlier Award, and, as far as we now know, the Carrier can blank a regular position when the one assigned thereto is absent account of illness as in the instant docket. But here the short answer is that the position was not blanked. It was worked. There is greater difficulty in disposing of other Carrier contentions.

In the Docket before us the Carrier needed a Ticket Seller, not just any employe to fill in at Window No. 9, in place of an absent employe. If an extra or furloughed Ticket Seller was available, he was not called. A man with a regular assignment, with rest days granted by rule, was used on one of his rest days. He was first called in advance of the time needed and could have been on the job at the appointed hour, but if so used, the basis for a dispute might not have arisen. So with what can be called deliberate planning, the first call was canceled and the next morning the call was again placed at a time when the employe would be about one and one-half hours late and could be worked beyond the quitting time of the assigned position, but less than the eight (8) hours for which he was paid, thereby providing a perfect setting for this dispute under conditions most favorable to the Carrier. The claims will be allowed for reasons hereinafter stated.

Work under the Agreement has been let according to craft and class. Work is claimed by Employes in keeping with seniority rights provided by rules of Agreement. Positions are advertised with full disclosure made as to working conditions of the advertised position, including hours of work. Conditions of the assignment for advertised positions are absolute unless changes therein are advertised and other rules observed. Claimant here, along with others, whose rights are fixed by rule, is accorded two rest days out of every seven, and the assigned rest days, too, would be absolute, if it were not for rules like Rule 40.

Rule 40, as the Carrier well knows, was agreed to on the express condition that if the employe was called for service on his assigned rest days, he would be paid for eight (8) hours service if he did nothing more than report pursuant to notice or call. As a further deterrent against promiscuous calls on assigned rest days, the employe must be paid at punitive instead of pro rata rates.

Of course the rule applies to the position for which the employe's qualifications caused him to be called, and is not to be used so as he can be handled in any manner the Carrier sees fit in order to exact eight (8) hours work from him. To apply the rule in any such way would be to eliminate the force and effect of all other rules for assigned positions. It would destroy a practice of general usage on most railroads, where not in conflict with rules, requiring the person called to fill an assigned position to do work according to the terms and conditions of the assignment. Without recognition of this practice or rule to cover, the Carrier, for the time being, might be without any contractual right to exact any work of the employe and the employe would be ever uncertain as to what was expected of him if he accepted the call. Rules are enacted, in part, to eliminate such confusion and not to promote it.

Of greater significance and a controlling reason, if more is needed to prove the Carrier wrong in this Docket, is that to apply the rule as the Carrier would apply it, is to render meaningless the words "shall be paid a minimum of eight (8) hours" (underscoring supplied), written into the rule. It would be to destroy all value there is in that feature of the rule which entitles the employe to be paid if he is called, reports and is not used.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 21st day of March, 1955.