

Award No. 6979
Docket No. CL-6965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood:

(a) That Carrier violated rules of current Agreement dated June 1, 1946, supplemented by Memorandum Agreement embodying the Forty-Hour Week Rules effective September 1, 1949, by requiring L. D. Jensen, regularly assigned to position of Check Clerk, Monday to Friday of each week, in the St. Paul Freight Station, to suspend work on his Check Clerk job Mondays of each week, commencing Monday, March 13, 1950, to relieve Refrigerator Inspector-Team Track Clerk (Choulock) on his designated rest day (Monday) of each week.

(b) That Mr. Jensen and/or his successors on the Check Clerk position be allowed a day's pay at overtime rate attached to position of Refrigerator Inspector-Team Track Clerk in addition to the day's pay already allowed for services performed on Monday, March 13, 1950, and continuing on each Monday thereafter until the rules violation is corrected.

Note: Actual monetary consideration involved in this claim to be determined by joint check of Carrier's payroll records, time books, etc. made necessary by subsequent changes in personnel on the involved positions.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 13, 1950, the Carrier maintained at the St. Paul Freight facility the following positions:

Position	Assignee	Hours of Service	Rest Days	5, 6 or 7-day Position
Refrigerator Inspector	Choulock	7 a.m.-2 p.m.	Sun. & Mon.	6-day
Team Track Clerk	Jensen	5 a.m.-1 p.m.	Sat. & Sun.	5-day
Team Track Clerk	Ertl	8:30 a.m.-5:30 p.m.	Sat. & Sun.	5-day

The Refrigerator Inspector's job is designated as one where the nature of the work is such that employees are needed 6 days per week pursuant to Rule No. 30-1(c) of the Forty-Hour Week Rules. One of the relief days of

covered by Vacancy Notice No. 29 issued on February 23, 1950 was established in accordance with Rule 30-1 (e) of the current Clerks' Agreement.

General Chairman Henry Beck in his letter of October 23, 1951 to Chief of Personnel H. W. McCauley, presenting the claim of Mr. Jensen, also contended that:

"Prior to March 13, 1950, Mr. L. D. Jensen occupied a position of Check Clerk at St. Paul Freight Station Monday through Friday. On March 13, 1950, the position occupied by Mr. Jensen was reduced to the four days per week as Check Clerk and one day per week as Relief Refrigerator Inspector * * *."

Whether Mr. Jensen occupied a position of check clerk five days per week prior to March 13, 1950 is of no significance. The Carrier has no knowledge of any rule of the Clerks' Agreement that would prohibit reducing a position one or more days per week and then including the remaining days in a combination rest day relief-other work assignment. Such a procedure would not be incompatible with the original inauguration of work on several days of a work week for the purpose of including such work in a combination rest day relief-other work assignment and thereby establish a relief assignment consisting of five days of work with two consecutive rest days. Obviously, there is no rule of the Clerks' Agreement prohibiting a reduction in the number of days of work on a regular position and including the remaining days of work attaching to that position in a combination rest day relief-other work assignment. If this were not proper, then the Carrier is at a loss to understand where the days of other work would be available to include in a combination rest day relief-other work assignment. The framers of Rule 30-1 (e) by providing for the establishment of a combination rest day relief-other work assignment presumably had in mind the precise thing that was done in the establishment of the relief day relief assignment covered by Vacancy Notice No. 29 issued on February 23, 1950.

Mr. Beck in his letter of October 23, 1951 to Chief of Personnel H. W. McCauley (Carrier's Exhibit "B") also alleged that Mr. Jensen "was required to suspend work on his regular assignment of Check Clerk" on Monday, March 13, 1950 and subsequent Mondays. This allegation is untenable. The rest day relief assignment which included rest day relief service on the position of refrigerator inspector on Mondays was bulletined on February 23, 1950. Mr. Jensen made application for this assignment and became assigned thereto by bulletin. Consequently, Mr. Jensen by his own actions was not required to suspend work on Mondays to relieve the position of refrigerator inspector on those days.

The Carrier has shown that the claim covered by this docket has not been presented and appealed in conformity with Rule 55 (f) and Rule 55 (b) of the Clerks' Agreement effective June 1, 1946 and the Railway Labor Act, as amended. Consequently, this Division has no authority to assume jurisdiction over the merits of this claim.

The Carrier has also shown that the provisions of Rule 30-1 (e) of the Clerks' Agreement effective June 1, 1946, as revised effective September 1, 1949, were fully complied with in establishing the combination rest day relief-other work assignment. There is therefore no merit to the claim covered by this docket.

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

(Exhibits not reproduced.)

OPINION OF BOARD: On February 23, 1950, the Carrier bulletined a "Relief Position" to provide relief on Monday for a Refrigerator-Inspector position and to work Tuesday through Friday as Check Clerk with Saturday

and Sunday off. Claimant bid for and was assigned to that position. The basic issue here is whether that position was a proper one under the Agreement.

Rule 30-1 (e) provides specifically for the establishment of regular relief assignments "to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement." Since that provision of the Agreement clearly authorizes the establishment of a relief position such as that involved here, the claim is without merit. See Award No. 6969.

The Brotherhood contends that decision in this case is governed by our Award No. 5330. In that case no relief position was established but the Carrier merely used a regularly assigned employe to perform relief work, so it is not applicable to the circumstances existing herein.

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

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 May, 1955.