

Award No. 6997
Docket No. CL-6654

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

Employee R. W. Carothers be compensated for eight (8) hours at the penalty rate of Clerical Position No. 849 at Garner, Iowa for Saturday and Sunday, October 15 and 16, 1949 and all subsequent Saturdays and Sundays that position was filled by an outsider.

JOINT STATEMENT OF FACTS: Employee R. W. Carothers, seniority date January 8, 1946, assigned to position No. 849 at Garner, Iowa as Clerk from 9:00 P. M. to 6:00 A. M. with one hour for lunch. Position is assigned daily with Saturday and Sunday as assigned rest days.

Prior to October 15th, 1949, employee Elsie Hrubes, seniority date May 1, 1946, was used to relieve this position on assigned rest days, Saturday and Sunday. On October 13, 1949 employee Hrubes was granted a leave of absence account of sickness for six months or less, and Charles Johns was employed to relieve the position on Saturday and Sunday.

POSITION OF EMPLOYES: There is located in Seniority District No. 41, in addition to position No. 849 at Garner, Iowa, other positions which required seven days service each week. Those positions, like the one at Garner, were needed to service trains and perform other station work, therefore, requiring service on seven days of each week. The exact number of positions requiring service on six or seven days is not known by the employees. However, there were several positions existing in the Seniority District at the time this dispute arose and we list below three positions which, we believe, is sufficient to prove the contention of the employees.

POSITION NO.	TITLE OF POSITION	REGULAR OCCUPANT	LOCATION	SENIORITY DATE
849	Clerk	R. W. Carothers	Garner, Ia.	1/ 8/46
312	Baggage man	Harry Black	Calmar, Ia.	9/21/25
794	Station Helper	W. G. Myers	Clear Lake, Ia.	12/ 4/44

hours in a work week. Employee Carothers, the claimant, did not perform service in excess of 8 hours on any day nor in excess of 5 days or 40 hours in any work week.

For the reasons cited the Carrier asserts the claim is not supported by schedule rules and respectfully requests that same be denied.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned to Position 849 at Garner, Iowa, 9:00 A. M. to 6:00 P. M., Monday through Friday, with Saturday and Sunday as rest days. Prior to October 15, 1949, one Elsie Hrubes was used on Saturdays and Sundays. On October 13, 1949, she was granted a six months leave of absence and Charles Johns was employed to perform the Saturday and Sunday work. The use of Johns is alleged to be in violation of the Agreement and Claimant seeks compensation for work lost.

It is first contended that Carrier violated Rule 27(e), 1949 Supplemental Agreement, in not establishing a regular relief assignment to work five of six rest days at Garner, Calmar and Clear Lake. The record shows that there were two rest days to be filled at each of the three named points, all in the same seniority district. The record also shows that the distance between Garner and Calmar is 95 miles. Clear Lake is between the two, 11 miles east of Garner. The only available extra employees were at Mason City which is nine miles east of Clear Lake. Rule 27(e) provides:

"All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

The Carrier shows that there was not adequate train service between the three points to permit a regular relief employee to perform the service required. The words "All possible regular relief assignments * * * will be established to do the work necessary on rest days * * *" means that such positions will be assigned when reasonable conditions exist which will permit all of the work to be done in the manner required. We do not think the Carrier violated Rule 27 (e) in failing or refusing to establish a regular relief position to do rest day work at these three points. The rules do not require the establishment of such positions in every instance where it is literally possible to do so. Reasonableness must govern in the application of such a rule.

The Organization contends that there were furloughed and extra clerks at other points which should have been used for the rest day work at Garner. For the purposes of this claim, we accept Carrier's statement that they were not available to perform the work in question.

The Organization next contends that the use of Johns violated the Agreement. Johns was a farmer who had never worked for the Carrier prior to performing Saturday and Sunday rest day work on Claimant's position. It is clear that he was not a bona fide employee when he was hired. It is clear also that he had no employment status with the Carrier when he accepted the rest day work in question. This Board has repeatedly held that to qualify for rest day work, a person must be a bona fide employee with antecedent seniority or employee status. This is the construction the Board

has placed on rules similar to the wording used in Rule 28, 1949 Supplemental Agreement. We adhere to those holdings. Awards 5558 and Interpretation No. 1 thereto, 6259, 6522, 6853, 6854, 6855 and 6974.

It appears from the record that Johns was given a seniority date which was properly posted and not protested. But this does not invalidate a claim based upon Johns' improper use under the Awards cited in the previous paragraph.

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 Agreement was violated.

AWARD

Claim sustained at pro rata rate, except for any holiday work involved which is payable at the time and one-half rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day May, 1955.