

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 AND PACIFIC RAILROAD
COMPANY**

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

Carrier violated and continues to violate the Clerks' Rules Agreement when bank clerk J. T. Kubesheski, college student Wm. E. Chatfield, locomotive fireman D. L. Weber, and others who held no seniority in District No. 56 and who were not employees covered by the scope and application of the Clerks' Rules Agreement were used to relieve Roundhouse Clerk Chas. Pullen at Dubuque, Iowa periodically on Saturdays and Sundays since May 29, 1949 and, as a result of this violation, Carrier shall be required to compensate employe Pullen at the time and one-half rate for each Saturday and Sunday so relieved since May 29, 1949.

EMPLOYES' STATEMENT OF FACTS: Employe Chas. Pullen is regularly assigned as Roundhouse Clerk at Dubuque, Iowa and has occupied that position for many years. His assigned hours are 7:00 A. M. to 4:00 P. M. with one hour meal period, and the rate of his position on May 29, 1949 was \$9.34 per day.

The Roundhouse Clerk's position at Dubuque, Iowa is one included in Seniority District No. 56 and employe Pullen holds a seniority date in that district of June 1, 1919.

Prior to May 29, 1949, employe Pullen was assigned to work seven (7) days per week and was paid at the time and one-half rate for work performed on Sundays.

Effective May 29, 1949, Carrier employed J. T. Kubesheski, a bank clerk who held no seniority in District No. 56, and assigned Mr. Kubesheski to relieve Roundhouse Clerk Pullen each Sunday, thereby working this party one day per week. This practice continued each Sunday until September 3, 1949 when—because of the inauguration of the 40-Hour Week—Mr. Kubesheski relieved employe Pullen also on Saturday, September 3rd, and Sunday, September 4th.

We ask that your Honorable Board give full consideration to the fact that on this Railroad it has been the universal practice for years to bring new employes into service for the purpose of filling positions on rest days and filling vacancies or, as indicated above, to perform work on days not covered by regular assignments. The records clearly show such was the case in connection with the roundhouse clerk's position at Dubuque for it was filled on the rest days by extra employe brought into service for that purpose beginning at least as early as 1937 and continuing up to 1943 when this, like many other situations, were altered by the man-power conditions resulting from the War. The employes continuously argue that the schedule must contain a rule permitting the Carrier to bring employes into the service and in the absence of such a permissive rule, the Carrier is not free to bring new employes into service except in a case where there is a full time position available for such new employe. To the contrary, the Carrier contends that for the employes' contention to have support, the schedule must contain a rule specifically prohibiting the Carrier to do so, otherwise that inherent right of the Carrier, which it has always had remains with it. This thought is clearly supported by awards of your Honorable Board.

The schedule rules contain no prohibition against the use of employes J. T. Kubesheski, Wm. E. Chatfield and D. L. Weber to perform work on days which were not a part of a regular assignment; in fact, the current schedule rules specifically provide for the use of these available extra employes who did not otherwise have 40 hours of work in a work week. Neither did the rules guarantee the claimant work or earnings in excess of 6 days per week prior to September 1st, 1949 and 5 days per week thereafter nor do the schedule rules contain any provision that a new employe can be brought into service only in a situation where a full time position exists for him. In the absence of such a provision in the schedule it cannot be interpreted and applied as though such a provision exists.

For the above reasons the claim is not supported by the schedule rules and we respectfully ask that it be declined.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned as Roundhouse Clerk at Dubuque, Iowa, 7:00 A. M. to 4.00 P. M., Monday through Friday, with Saturdays and Sundays as rest days. The position was a seven-day one. Prior to May 29, 1949, Claimant worked his Sunday rest day at the time and one-half rate. On May 29, 1949, one J. T. Kubesheski, a bank clerk holding no seniority, was used to perform the Sunday work until September 4, 1949, when he bid in Yard Clerks position. Claimant performed the rest day work of the position on September 10 and 11, 1949. Carrier then used one William E. Chatfield on the rest day work until April 22, 1950. From May 6, 1950 to November 12, 1950, one D. L. Weber, a furloughed fireman holding no employment rights as a clerk was used to perform the rest day work. On January 13, 1951, Weber filled a short vacancy on Claimant's position during the latter's absence on leave. On June 16, 1951, the rest day work in question was included in a regular relief position which terminated the claim. Were Kubesheski, Chatfield and Weber properly used on Claimant's rest days?

We are in accord with the views of the Carrier that prior to the effective date of the 40 Hour Week Agreement, new employes could be hired who could work as extra men, including the rest day work of seven-day positions. But contrary to the contention of the Carrier, Rule 28, Agreement effective September 1, 1949, did limit the class of employes who could perform rest day work. Our interpretation of Rule 28, by numerous awards, is that to qualify for rest day work, a person must be a bona fide employe with antecedent seniority or employe status. This is an interpretation peculiar to Rule 28, and similar rules corresponding with it. Award 6997 and awards therein cited.

The record shows that prior to the 40-Hour Week Agreement, new employees were hired to do extra work, including rest day work. The record shows that employees Abraham, Avery and Rooney were so used in 1937 without complaint. The Organization acquiesced in this apparently until the present claim was made in May 1949. The claim is not valid as to rest days prior to September 1, 1949.

The claim is valid for the days worked after September 1, 1949 to January 13, 1951, for work performed on Claimant's rest days by Kubesheski, Chatfield and Weber. The claim terminates on January 13, 1951, because Weber qualified to perform the work at that time by working as relief for Claimant on the latter's regular assignment. From that time on, during the balance of the period of the claim, Weber had the necessary employee status to do the work. The claim is sustained to the foregoing extent.

It is urged that Claimant's rest days after the effective date of the 40-Hour Week Agreement should have been included in a regular relief assignment. There was only the one clerical position in the Mechanical Department at this point. The evidence does not sustain the claim that the circumstances were such that Carrier was obliged to establish a regular relief position which would include the rest days of Claimant's position.

Claimant is entitled to be compensated for work lost as herein set forth at the pro rata rate, it being the penalty rate for work lost for all days except holidays.

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 violated in accordance with Opinion.

AWARD

Claim sustained as per Opinion and Findings at the pro rata rate except for holiday work involved for which time and one-half is the applicable rate.

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.