Award No. 7026

Docket No. CL-7119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, 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 and Steamship Clerks, Freight Handlers, Express and Station Employes that:

(1) The Carrier violated Rules of the Working Agreement bearing effective date of January 1, 1950 in assigning an employe junior in seniority to C. R. Carrico who was available to fill a temporary vacancy on the position of Third Shift Messenger CD Yards on January 21, 1954;

(2) Mr. Carrico be allowed time lost equivalent to one day's pay at the overtime rate attached to the Third Shift Messenger Position, namely, $17.49.

EMPLOYES' STATEMENT OF FACTS: Messenger C. R. Carrico is regularly assigned to the Relief Messenger Position at CD Yards. His regular assigned days of rest are Wednesday and Thursday.

Joseph Nowak at the time of this claim was the regular assigned Third Shift Messenger (11 P. M. to 7 A. M.) at the same point with regular assigned days of rest of Sunday and Monday.

From the foregoing, it will be noted that Mr. Nowak was scheduled to work the third shift on Thursday, January 21, 1954. However, at or about 10:20 P. M., Mr. Nowak notified the second shift Chief Clerk that he was ill and would be unable to report for work. There were three extra Messengers, but none of them could be reached, either they did not answer the telephone or their phone was out of order. The Management made no effort to call Mr. Carrico, who was the senior available Messenger off duty on his assigned rest day. Instead of calling Mr. Carrico, when they were unable to reach any of the extra Messengers, the second trick Chief Clerk requested the second shift Messenger, Mr. Rex Sedwick, to double over and work the third shift vacancy.

Mr. Carrico filed claim for a day's pay at punitive rate on January 22, 1954, and the claim was declined by Agent R. B. Wilson on January 25, 1954. In his declination of the claim, Agent Wilson based his position on the statement that the Chief Clerk spent forty minutes making three telephone calls in an effort to locate the extra Messengers and at that time it was too late to call Mr. Carrico.

gory of overtime, notwithstanding the fact that under certain circumstances employes may be paid overtime rates for protecting the vacancies, and was not considered as such when we adopted the second paragraph of Rule 42. There is a decided distinction between recognized overtime and work that must be paid for at overtime rates because of other provisions of an agreement.

Generally speaking, I find that our practices in the various yard clerk seniority districts are more or less uniform. When there are no extra men available and we have advance notice of vacancies occurring on the rest day of an employe, we call the man who is off duty. Personally, I think this preferable to any other arrangement as it avoids excessively long hours. When we do not have any advance notice, the man on the preceding shift (scheduled for relief) is required to double through, although some of the Agents give the work to other available employes if the incumbent of the previous shift does not wish to double. In some cases the work of an entire shift has been divided among two employes so as to avoid the necessity of working anyone sixteen hours.

I think that the general practice that has been followed has enabled us to protect all vacancies without detriment to the service, and that it has been fair to the men. I recommend its continuance as we do not want to impose unduly long hours on any of our employes where it can be avoided or force any of them to work two shifts against their wishes if there are other regular men available. However, there must not be too much restriction on our supervisory forces, who are responsible for seeing that the work is properly done.

Yours very truly,

/s/ John A. Wicks
Director of Personnel."

As we have stated, the claimant had no telephone in his home and the only means of contact was through a third party. To start with we had only forty minutes to get someone to fill the position and by the time we had exhausted our efforts to get one of the three extra men, without success, the requirements of the service would not permit calling the claimant and waiting for him to report. It is very seldom that employes called from home to work report in less than one hour and it is usually longer. There are published closing times for delivering perishable freight to connecting lines for their trains and, if we fail, we are liable in case a claim results from such failure. The messenger's services were needed at 11:00 P. M. to help in handling the perishable and there is no valid basis for contending that the claimant was available.

The claim should be denied.

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

OPINION OF BOARD: The parties are in agreement that when no extra men are available and when the Carrier has advance notice of vacancies occurring on the rest day of an employe, the man who is off duty will be called and the man on the preceding shift will not be required to double through.

The Carrier received notice of an 11:00 P. M. vacancy at 10:40 P. M. There were three extra men who stood for call for this vacancy and the Chief Clerk attempted to reach them by telephone. The first two did not answer and the third man's telephone gave a busy signal twice. By this time, according to the Chief Clerk, it was 11:00 P. M. so he instructed the man on shift,

who was junior to Claimant, to double through. No attempt was made to call Claimant who was at home on his rest day.

Claimant lives about two miles from the office and owns an automobile. He states that it takes him about 15 minutes to get to work. He has no telephone but takes calls through a neighbor about 4 houses away from his house, about a 3 minute walk. On the other hand, the Carrier asserts that employes called from home to work seldom report in less than one hour.

Assuming that Claimant could have reported for work 18 minutes after call, this would leave 22 minutes to make the calls to the three extra men.

Claimant was not entitled to a call until after an honest effort had been made to reach the three extra men; and he was not entitled to a call then, if a call would have been futile. Considering the time intervals involved, we are unable to conclude that there was sufficient advance notice here to have enabled Claimant to report for work at 11:00 P. M. if he had been called.

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

That 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 24th day of June, 1955.