

Award No. 7038

Docket No. CL-7013

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**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

(a) The Carrier violated the Clerks' Agreement when they changed the rest days of the Stenographer-Clerk in the Chief Dispatchers' Office, Cedar Rapids, Iowa, without conference, from Sunday and Monday to Thursday and Friday, effective January 12, 1950.

(b) That George Awes, incumbent of this position be paid eight (8) hours at punitive rate for each Sunday and Monday, January 12, 1950, to and including December 1, 1952.

EMPLOYEES' STATEMENT OF FACTS: George Awes is employed as Steno-Clerk in the Dispatcher's Office, Cedar Rapids, Iowa. Prior to application of the 40-hour Week Agreement of September 1, 1949, his was a 6-day assignment, Monday through Saturday. Effective September 1, 1949 the assignment was changed from a six-day to a five-day assignment—Monday through Friday, 8:30 A. M. to 5:30 P. M., assigned rest days Saturday and Sunday.

Effective September 18, 1949, Carrier abolished position of Night Report Clerk in the Dispatcher's Office. In the disposition of work normally attached to the position of Night Report Clerk, some of the work was assigned to the Steno Clerk effective September 19, 1949, whereupon the Carrier changed the hours of service assignment of the Steno-Clerk to 5:00 A. M. to 9:00 A. M. and 10:00 A. M. to 2:00 P. M., and also changed the position from a 5-day to a 7-day assignment with Sunday and Mondays as designated rest days.

Stenographer-Clerk George Awes worked his rest days, Sundays and Mondays, from September 19, 1949, to January 12, 1950, inclusive, and was paid eight (8) hours at time and one-half on each of his rest days worked. Effective January 12, 1950, the hours of service assignment of the Steno-Clerk position (Awes) were changed to 8:00 A. M. to 12:00 noon and 1:00 P. M. to 5:00 P. M. with Thursdays and Fridays of each week as the designated rest days, Awes' assignment being Saturday through Wednesday with

days of this position, there can be no validity in the Organization's claim for the punitive rate on Sundays and Mondays. It is obvious that each week Claimant Awes had enjoyed the privilege of his rest days. We think the claimant, therefore, asks of your Board far too much. He asks much more than our other employees ask or received.

Part (b) of the Organization's Statement of Claim you will note requests that Claimant Awes be paid eight hours time at the punitive rate for the days of claim. We do not understand this part of the claim as it appears to inflict a double penalty upon the Carrier. Claimant Awes has already been paid eight hours time for those days of claim. Therefore, we believe that the Organization really means by their claim that they want an additional four hours pay given to claimant Awes for each of these Sundays and Mondays. This it appears is to be a bonus for Claimant Awes. However, even a claim for four hours time is not valid for the reasons assigned above. We have used in our description of what we think Part (b) of the claim to mean, the term "bonus" because it seemed most apt for the reason that **any week during the entire period of claim that Claimant Awes worked beyond forty hours he was already paid for that time and paid at the punitive rate.** As a result, we know that Claimant Awes has been compensated fully and properly for all work performed for this Carrier.

In conclusion, we might add that you, no doubt, will have noticed that we have not cited to you rules of the Agreement permitting the Carrier to make the changes in claimant's rest days. We can assure you, however, changing rest days of the position was not a caprice or without reason. Our acts were the result of operational problems fully explained to you earlier in this brief. We, therefore, rely upon your expressions in a great number of Awards stating that the Carrier has all rights not forestalled by law or whose control is not contracted to others. Such Awards are too numerous to need our citing them here. Because of this it now becomes the duty of the Organization to disclose to you laws or rules prohibiting Carrier's acts. We will then fully reply in later submission as is our prerogative, to any charges they may make.

We have, however, in these submissions given you all the fundamental and basic information regarding the factors and happenings in each of these four cases. Only when we know the full position of the Organization regarding these matters and whatever provisions they may rely upon can we adequately discuss that position and such provisions.

For the reason that this is an ill founded attempt to penalize the Carrier and because Claimant Awes has already been fully compensated for all work performed during the period of claim, and for other reasons explained to you throughout our submission, we respectfully petition that you declare the claim to be unworthy and deny it along with its companions.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Regardless of whether Rule 46½, Section (k) (b), agreed to on August 11, 1950, is considered applicable to the change of rest days on January 12, 1950, it appears that such change was made because of the availability of rest day relief due to a reduction of force, so there could be no violation of that rule.

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

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 29th day of June, 1955.