

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**FLORIDA EAST COAST RAILWAY COMPANY
JOHN W. MARTIN, Trustee**

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

(a) Carrier violated and continues to violate the parties' agreement effective July 5, 1946, and the 40-Hour Week Agreement effective September 1, 1949, when on October 10 and 11, 1952, it utilized a regularly assigned employee on his assigned rest days to fill a short vacancy at the pro rata rate in preference to calling an available furloughed employee to fill the short vacancy, and as a penalty.

(b) Carrier shall compensate furloughed Clerk H. B. Holliday a day's pay at the pro rata rate of Ticket Clerk Position No. 40 for Friday, October 10, 1952, and a day's pay at the pro rata rate of Ticket Clerk Position No. 22 on Saturday, October 11, 1952, and

(c) Regularly assigned Ticket Clerk R. H. Schnarr shall be allowed the difference between the amount received at the straight time rate and the amount he should have received at the rate of time and one-half for services rendered on his regularly assigned rest days of Friday and Saturday, October 10 and 11, 1952.

EMPLOYEES' STATEMENT OF FACTS: The regular assignee of Relief Assignment No. 10 at Miami, Florida, requested that he be allowed to be absent on Friday and Saturday, October 10 and 11, 1952, which was granted by the Carrier. Relief Assignment No. 10 is regularly assigned to furnish relief on rest days of Position No. 40 from 8:00 A. M. to 4:00 P. M. on Friday, and Position No. 22 from 7:30 A. M. to 3:30 P. M. on Saturdays.

Ticket Clerk R. H. Schnarr is regularly assigned to Relief Assignment No. 11, with rest days Friday and Saturday. On the dates in question he made written request on the Carrier to be allowed to fill the short vacancy on Relief Assignment No. 10 and was so allowed to render service on his assigned rest days of Friday and Saturday, October 10 and 11, 1952, and was compensated therefor at the straight time rate of pay. After working the two days in question, he returned to his regular assignment, No. 11, on the following day, October 12, 1952. Claim was filed for the difference between the amount received at straight time and the amount he should have

ployes, who do not have the right accorded assigned employees by the agreement to apply for short vacancies, and in agreeing that an employee would not be considered as moving from one assignment to another except when doing so by application or bid, the Chief Operating Officer certainly did not agree that an employee would not be considered as moving from one assignment to another except when moving from one assignment to another by application or bid for a position or vacancy bulletined in accordance with Rule 9 as the Employees attempted to misconstrue the understanding to serve their purposes. Because "application" instead of "bid" is used in Rule 9 and other rules dealing with bulletined new positions and vacancies does not restrict its customary meaning. An assigned employee applying for a short vacancy under Rules 8, 11 (b) and 19 (c) is making an "application" to exercise his seniority just as much so as one who makes "application" to exercise his seniority under the rules governing the filling of bulletined new positions or vacancies, and the Railway asserts that the word as used in the understanding applies and was intended to apply to any and all applications to exercise seniority under the rules of the Agreement, otherwise the understanding would have contained the language the Employees attempted to read into it and which it plainly, specifically and purposely does not contain.

6. On the facts, abundantly proven by the evidence produced above, assigned Clerk Schnarr had a prior right over furloughed Clerk Holliday under Rules 3 (e), 7, 8, 11 (b) and 19 (c) to the short vacancy in question, and under the mutual understanding of the operation of those rules both prior and subsequent to September 1, 1949, unaffected by the 40-hour week revisions of other rules, when he applied for and was used on the short vacancy, he assumed all of the conditions of the assignment in which the short vacancy existed, including its rest days and coincidentally relinquished the conditions of the assignment from which he moved including its rest days exactly as he would have done if the vacancy had been of sufficient duration to require bulletining and he had applied for it and been awarded it.

No basis for the claim, therefore, exists in the rules of the agreement, and the claim should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 9, 1952, Clerk Sandifer of the Miami Ticket Agency requested a leave of absence as follows:

"Account of my wife having just returned home from the hospital it will be necessary that I be off effective October 10th and I will advise later as to what date I will be able to return to work."

Regular Clerk Schnarr applied for and was assigned to that short vacancy. On October 11th Sandifer advised that he would return on the 12th and did so. The 10th and 11th worked by Schnarr on that vacancy coincided with the rest days of his regular assignment.

Rule 19 (c) provides in part that furloughed employees "shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces". It fairly appears that the parties previously agreed that, under such rule and Rule 8, a regular employee applying for a short vacancy should be assigned to it, the regular forces should be rearranged to give them the benefit of more favorable

conditions and the senior furloughed employe should be called for the ultimate vacancy. Such agreed interpretation is not inconsistent with the rule.

The vacancy here, although of unknown duration, turned out to extend over only the rest days of Schnarr's position, so it was not necessary to rearrange any others of the regular force nor to call a furloughed employe. That subsequent development does not affect the propriety of the original application of the rule in accordance with such agreed interpretation.

We have repeatedly held that rest days attach to a position, not to an employe so that he may not carry them with him as he moves from one position to another. Consequently, under the exception of Rule 45 (c) the claim of Schnarr is without merit.

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 29th day of July, 1955.