

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**

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Rules of the agreement of October 1, 1942, amended, between the parties when on the dates and under the circumstances related in the Employes' Statement of Facts it called, notified or used the regular incumbents of positions on their rest days to perform the work of such positions in the absence of the regular relief employes, and;

(b) A proper application of the Rules Agreement in the cases cited would have been to call, notify or use the senior, qualified, available employes, and;

(c) The Carrier pay to D. J. Burns two days at time and one-half the Gateman rate for failure to call him on October 24 and 25, 1953, and, that the Carrier pay to L. L. Shaffer one day at the time and one-half rate of position of Gateman for failure to call him on December 18, 1953, and;

(d) The Carrier pay to L. L. Shaffer a day's pay at the time and one-half rate of Gateman for failure to call him on January 1, 1954 (holiday).

EMPLOYES' STATEMENT OF FACTS: Claimant D. J. Burns, at the time of the claims filed in his behalf, Saturday, October 24, 1953, and Sunday, October 25, 1953, was the regular incumbent of Vacation Relief Position CLVR-1 assigned to him by Bulletin No. 371, effective August 31, 1953, which assignment is described in Employes' Exhibit F attached.

Claimant L. L. Shaffer, as of the dates of the claims filed in his behalf, Friday, December 18, 1953, and Friday, January 1, 1954, was the regular incumbent of Gateman Position CL-9, assigned to him by Bulletin CL-369, effective August 29, 1953. The hours of assignment of the position were 7:00 A. M. to 3:30 P. M. and rest days Friday and Saturday.

mission, the Carrier avers that the vacancies cited in the Employees' Claim were properly filled and compensated in accordance with the existing Agreement, as amended, between the Brotherhood of Railway and Steamship Clerks, etc., and the Carrier. Copies of this Agreement and the Awards mentioned in this submission are on file with your Honorable Board and Carrier requests that they be considered as a part of this submission.

The Carrier, therefore, requests that your Honorable Board deny this claim, part (a), (b), (c) and (d).

All of the foregoing has been made known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 24, 1953, Relief Gateman L. M. Fraker, whose assignment required him to relieve Gateman L. L. Shaffer, was unable to report for work. Carrier used Shaffer. Claimant D. J. Burns contends that he should have been used because he was senior to Shaffer. Other claims included were identical in principle with the above and will not be specifically stated.

The pertinent facts are: Shaffer was regularly assigned as Gateman, Sunday through Thursday, with Friday and Saturday as his rest days. Fraker was a regularly assigned relief Gateman who relieved Shaffer on Saturdays. The question is: When Fraker was unable to work on Saturday, October 24, 1953, did the Carrier properly call Shaffer, the occupant of the regular position or was it required to call the senior available employe?

The principal rule involved in this dispute is Rule 37 (f) which provides:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employes."

We point out, however, the claim involves days assigned to a relief position and is not work on unassigned days as contemplated by Rule 37 (f). There were no available extra or unassigned employes. The regular employe was therefore properly used. The applicable rule is stated in Award 5475 as follows:

"The rule is firmly established by a long list of Awards that work on rest days should be assigned in the first instance to the regularly assigned relief man, if there be such; secondly, to an extra man; and if an extra man is not available, to the regular occupant of the position on an overtime basis. Awards 4728, 4815, 5333. The regular occupant of the relief position or an extra man was not available. The work, therefore, belonged to Claimant."

See also Awards 5810, 6115, 6524.

The foregoing holdings of this Board, long recognized and applied, requires that the claims in the instant dispute be denied.

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 not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.