

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

SACRAMENTO NORTHERN RAILWAY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the rules of the Clerks' Agreement when it failed and refused to compensate Mr. V. O. Woodruff, Train Desk Clerk at Sacramento, California for a minimum of eight hours at the overtime rate for service performed on November 24, 1950, in filling the short vacancy occasioned by the absence of Train Desk Clerk Mr. C. E. Finley.

(b) Mr. V. O. Woodruff is entitled to and shall now be compensated for the difference between a minimum day of 8 hours at the overtime rate and the 6 hours allowed him for service performed on November 24, 1950.

EMPLOYEES' STATEMENT OF FACTS: Clerk C. E. Finley was regularly assigned to the 7-day position of Train Desk Clerk at Sacramento, California with hours 7:00 A. M. to 4:00 P. M. and rest days of Saturday and Sunday, as shown in Clerks' Bulletin No. 52 dated October 23, 1950, (Employees' Exhibit "A"), which hours were changed to 8:00 A. M. to 4:00 P. M. in order to comply with the provisions of Rule 15 of the Clerks' Agreement.

Clerk V. O. Woodruff was regularly assigned to the 7-day position of Train Desk Clerk at Sacramento, California with hours 4:00 P. M. to 12:00 midnight, with rest days of Tuesday and Wednesday, as shown in Clerks' Bulletin No. 84 dated December 22, 1949, (Employees' Exhibit "B").

On Friday, November 24, 1950, Mr. C. E. Finley, at about 8:00 A. M., called in and reported that he was ill and could not come to work. Clerk V. O. Woodruff was called as soon as this advice was received, to fill this vacancy. (Employees' Exhibit "C"). Mr. Woodruff, who had worked his regular assignment of 4:00 P. M. to 12 midnight the night before was still in bed and it was necessary for him to get up and dress, prepare and eat breakfast, and then catch a bus to get to work. As a result, he arrived for work at 10:00 A. M., and performed the work of Mr. Finley's assignment until 4:00 P. M., at which time he continued on his own assignment. For the service performed on the vacancy occasioned by Mr. Finley's absence, Mr. Woodruff was allowed 6 hours pay at the overtime rate.

All regular assignments now consist of five days of eight hours each, with two days of rest in each seven, and the former "seven day assignments at straight time" and "continuous operation" rules (see Rule 22, Agreement effective 1937, and subsequent revisions prior to September 1, 1949) have been eliminated from the Agreement by negotiation. To now hold that rules eliminated from the Agreement are still applicable would make a farce of negotiations.

Thus, the above interpretation under Award 1216, that the guarantee ran to the position can no longer have any validity under the Forty Hour Week Agreement, guarantees run to the employee rather than to the position. The claim here stated can only be based upon the argument that there is a guarantee running to the position involved that it will be filled eight hours each day, seven days each week. It is manifest that such an argument is wholly without support under the Forty Hour Week Agreement, which establishes a work week consisting of five days of eight hours each, and guarantees running to the employee.

Clerk Finley, the regular occupant of the position, was not available for work account illness, and in view of Finley's not giving reasonable notice of his absence, it was impossible to secure a clerk to work the position commencing at 8:00 A. M. Therefore, Carrier called a clerk under the overtime rule to perform the duties, such clerk not reporting until about 10:00 A. M. Clerk Woodruff was compensated a day's pay for working his own assignment on November 24, 1950 as second trick Train Desk Clerk, hours 4:00 P. M. to 12:00 Midnight, and was properly compensated under the overtime rule for the six hours' service ahead of his regular assignment.

Carrier strongly urges that the claim here presented be denied and asserts that both Clerk Finley and Clerk Woodruff were assigned for only five days with two consecutive rest days each week, and in Finley's absence no rule in the current Agreement provides a guarantee of eight hours' pay to an employee performing the duties of the Train Desk Position on an overtime basis.

All of the above has been presented to the Employees' Representative.

(Exhibits not reproduced).

OPINION OF BOARD: This claim presents the question whether the Carrier becomes obligated for a day's pay when the occupant of a regular position fails to report for work at the last minute account illness and the replacement is therefore unable to fill more than six of the eight-hour temporary vacancy.

The regular occupant of a first trick position (8:00 A. M. to 4:00 P. M.) telephoned about 8:00 A. M. reporting that he could not protect his first trick position account illness.

Claimant who was the regular occupant of the second trick position (4:00 P. M. to Midnight) was immediately called to fill the vacancy, but he was unable to report until 10:00 A. M. He worked 6 hours, 10:00 A. M. to 4:00 P. M. on the first trick vacancy and continued on through his own second trick.

Claimant was allowed and paid 6 hours at time and one-half pursuant to Rule 19 (a) which provides that time in excess of 8 hours, exclusive of meal period, in any 24 hour period shall be considered overtime and paid on the actual minute basis of time and one-half.

The claim is for the 2-hour difference between the 6 hours actually worked by Claimant and the full basic 8-hour day of the first trick position at the time and one-half rate.

First: This temporary vacancy was not blanked by the Carrier. The Carrier desired to fill it and succeeded in doing so for the last six hours of the assignment. The fact that the position was not worked during the first two hours in question was not due to any assignment or direction given by the Carrier. It was due to a combination of the occupant's failure to report seasonably and Claimant's inability and failure to report on time.

If, as the Organization argues, Claimant stepped into the occupant's shoes, he tardily stepped into tardy shoes.

Second: A situation such as this, entirely beyond the control of the Carrier, does not constitute "blanking a position in whole or in part" within the meaning of Awards 4550 and 561, either before or after the adoption of the Forty Hour Week Amendments to the Agreement (Awards 6691, 5589 and 5528).

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 Employee involved in this dispute are respectively carrier and employee 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 19th day of March, 1956.