

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(1) That Carrier violated the rules of the Schedule for Clerks when on Saturday, July 31 and Sunday, August 1, 1954, Carrier utilized extra unassigned employee R. E. Gambrill to work messenger position No. 10, after he had worked forty hours, Monday, July 26 to Friday, July 30, inclusive, 1954 as an extra Baggage Room employee, and failed and refused to compensate him at the punitive rate of messenger position he worked on Saturday, July 31 and Sunday, August 1, 1954.

(2) That R. E. Gambrill shall be compensated for the difference between straight time rate he was paid, and punitive rate for eight (8) hours used as messenger on Saturday, July 31 and Sunday, August 1, 1954.

JOINT STATEMENT OF FACTS: R. E. Gambrill was an extra baggage room employee and is shown on the July 1, 1954 seniority roster of baggage room employees at Decatur with seniority dating from December 5, 1949.

Mr. Gambrill was also an extra messenger and is shown on the July 1, 1954 seniority roster of messengers at Decatur with seniority dating from June 20, 1954.

Mr. Gambrill was used during the period Monday, July 26, through Friday, July 30, 1954, in accordance with his seniority standing on the baggage room employees' seniority roster, to fill a temporary vacancy on Position No. 12, Baggage Room Employee, during the period that the regular assigned employee was on vacation.

Mr. Gambrill was subsequently used on Saturday and Sunday, July 31 and August 1, 1954, in accordance with his seniority standing on the messengers' seniority roster, to fill a temporary vacancy on Position No. 10, Messenger, while the regular assigned employee was absent due to illness.

The dates and positions on which Mr. Gambrill performed service during the period referred to above are set out in chronological order below:

in the Opinion, or for that matter in the rule itself, warranting a conclusion that the exceptions in such rule are controlled or even dependent upon the nature of the work performed. Nor is there merit in a further contention advanced by Claimant to the effect that regardless of what is said and held in Award 5798 the exception relating to moving ' . . . to or from an extra or furloughed list . . . ' cannot be separated from the exception ' . . . due to moving from one assignment to another . . . ' Use of the word 'or' before each of the exceptions to the rule definitely establishes that neither of such exceptions is dependent upon the other. Under all well defined definitions 'or' is a co-ordinating particle that marks an alternative."

It is apparent that the exceptions contained in Rule 12, Section 2 (a) relieve the Carrier from penalty pay in circumstances such as arose in the instant case when it used the claimant, the senior extra messenger holding seniority on the messengers' seniority roster, as messenger, after he had previously performed service as a baggage room employe due to his standing on the baggage room employes' roster, another seniority group.

Rule 12, Section 2 (a) of the Schedule for Clerks, effective May 1, 1953, was taken from the National Forty-Hour Week Agreement of March 19, 1949, and the action of the Committee in submitting the claim of Extra Baggage Room Employe and Extra Messenger Gambrell for punitive rate for service performed on the dates in question is an attempt to secure a favorable award notwithstanding that rule and the opinion of this Board as expressed in Awards Nos. 5798 and 6018 and thereby vitiate or annul that rule without necessary resort to the proper procedures as provided for in the Railway Labor Act.

In view of all of the foregoing the contention of the Committee should be dismissed and the claim denied.

The substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held seniority in two separate seniority groups and his name was carried on two different seniority rosters. On one seniority roster he was carried as a Baggage Room Employe and on the other as a Messenger. At the time this dispute arose Claimant was working as a Messenger and was carried as an extra employe on the baggage-room employes' roster.

Claimant was used on Monday, July 26 through Friday, July 30, 1954, to fill a temporary vacancy in regularly assigned position No. 12 as a baggage room employe due to the regular employe being on vacation. The vacancy filled was on a seven-day position assigned Monday through Friday, with Saturdays and Sundays as rest days.

On Saturday, July 31 and Sunday, August 1, 1954, Claimant was used to fill a temporary vacancy on messenger position No. 10 due to the illness of the regular occupant of that position.

It is the claim of the Organization that Claimant should be compensated at the rate of time-and-one-half for the Saturday and Sunday work on the theory that he had worked seven consecutive days as an extra man whose work week commenced on Monday under Rule 12, Section 1 (i).

When Claimant worked the vacancy on position No. 12, he assumed the work week and rest days of that position under Rule 12, Section 1 (b). His rest days were Saturday and Sunday because of that rule and not because he was working as an unassigned employe under Rule 12, Section 1 (i).

The record shows, however, that after completing his work on position No. 12 on Friday, July 30, 1954, he was used on a vacancy on messenger position No. 10, a position in a different seniority group and on a different seniority roster.

We must necessarily hold that his right to Saturday, July 31 and Sunday, August 1, 1954, as rest days, arose under rights attained on the baggage room employes roster. But when he worked on messenger position No. 10, he was working pursuant to rights attained under his seniority as a messenger, a different group with a different seniority roster. It is fundamental that when an employe holds dual seniority in different groups or classes having separate seniority rosters, they cannot be tacked for the purpose of attaining additional benefits. By working on a position in another group or class with a different seniority roster, he loses all rights under the former, including his assigned rest days and, necessarily his right to time-and-one-half pay because of having worked his assigned work days in the other group or class. His claim for time-and-one-half pay for rest day work while working as a messenger would arise only for rest days to which he was entitled while working in that group and under that seniority roster. Previous holdings of this Board clearly sustain this principle. See Awards 5629, 5705, 5798, 6018, 6970, 6971.

Our attention is called to Awards 6479, 6504, 6973 and 7032. We find nothing in these awards which is inconsistent with our holding. We shall not review them. We simply point out that when an employe moves from a position in one group to a position in another group with a different seniority roster, his rest days and his right to rest day pay must arise within the latter group. The claim must 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 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1956.