

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**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

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

1) Carrier violated and continues to violate the Clerks' Rules Agreement when, effective August 25, 1951, it discontinued the Saturday and Sunday rest days on Position No. 12, Yard Clerk at Ottumwa, Iowa and in lieu thereof assigned Sunday and Monday as rest days on that position.

2) Carrier shall restore the Saturday and Sunday rest days to Position No. 12.

3) Carrier shall compensate Employee William Haseltine for the difference between the straight time and the penalty rate for each Saturday he was required to work Position No. 12, retroactive to August 25, 1951.

4) Carrier shall compensate Employee William Haseltine for eight (8) hours at the straight time rate for each Monday he was not permitted to work Position No. 12 subsequent to August 25, 1951.

EMPLOYEES' STATEMENT OF FACTS: Employee William Haseltine is the regular occupant of Position No. 12, First Trick Yard Clerk position at Ottumwa, Iowa. He has a non-clerical seniority date of July 18, 1925 and a clerical seniority date of January 25, 1926.

Prior to September 1, 1949, Position No. 12 was a seven-day position. Sunday was the assigned rest day and was included within a regular relief assignment. (Employees' Exhibit "A").

Effective with the establishment of the 40 Hour Week on September 1, 1949, Position No. 12 remained a 7-day position and Employee Wm. Haseltine continued to occupy the position, but Saturday and Sunday were then assigned as rest days on that position. (Employees' Exhibit "B"). Those days were likewise included within a regular relief assignment.

changing rest days. The rest days of all "7-day" positions at Ottumwa were set up strictly in accordance with the provisions of Rule 27 (d). In other words, the occupants of the five "7-day" positions were accorded two consecutive rest days with the presumption in favor of Saturday and Sunday to the extent possible.

There is absolutely no rule understanding or provision that would give Claimant Haseltine the right to demand Saturday and Sunday as rest days and the assignment of rest days Sunday and Monday to Position 12, which was a "7-day" position, as referred to in Rule 27 (d), is strictly in conformity with the schedule agreement and specifically that rule.

There is no support for the claim which has been presented in this case and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the occupant of Position No. 12, a first trick yard clerk position at Ottumwa, Iowa. Prior to August 25, 1951, the position was assigned Monday through Friday, with Saturday and Sunday as rest days. On July 17, 1951, this position was rebulletined Tuesday through Saturday, with Sunday and Monday as rest days, effective August 25, 1951. Claimant bid in Position No. 12 but protested the change in rest days because of his being the senior employee.

The record shows that there were five seven day positions at Ottumwa. These were arranged in such a manner that the rest days were filled by two regularly assigned relief employees. For several years Claimant had Saturday and Sunday as his rest days. Due to an objection by the Division Chairman of the Organization, it was necessary to assign the occupant of Position No. 115 a work week of Monday through Friday with Saturday and Sunday as rest days. This necessitated changing Claimant's rest days to Sunday and Monday. This arrangement was further due to the fact that Carrier required the occupant of Position No. 109 to be on duty Monday through Friday to accommodate shippers operating their facilities on those days. While we are not unmindful of the rights of senior employees, we are not willing to say that a senior employee deprived of his preference as to rest days has a valid complaint if any reasonable ground exists for such action. We think the Carrier was justified in assigning the Claimant Tuesday through Saturday with Sunday and Monday as rest days under the record before us. The Claimant can protect himself by the exercise of his seniority if his assigned rest days are not satisfactory. We agree with the general proposition that senior employees should have the preference in assigning rest days, everything else being equal. We point out that the Agreement provides that "so far as practical the days off should be Saturday and Sunday". Rule 27(a), current Agreement. From this we necessarily infer that if it is impractical to assign Saturday and Sunday as rest days in seven day service, "any two consecutive days may be the rest days". Rule 27(d), current Agreement. The provisions as to Saturday and Sunday rest days in six and seven day service are not mandatory and where it is shown, as here, that it was impractical to assign Saturday and Sunday rest days, there is no basis of claim because of their non-assignment.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1956.