

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement between the Parties when, at Birmingham, Alabama, and Ensley, Alabama, it failed and refused to compensate Mrs. Mary Nell Williams for eight hours pay for Labor Day, September 6, 1954, and Thanksgiving Day, November 25, 1954, recognized holidays, and

(b) The Carrier shall now be required to compensate Claimant Mrs. Mary Nell Williams eight hours pay for Labor Day, September 6, 1954, and Thanksgiving Day, November 25, 1954.

EMPLOYEES' STATEMENT OF FACTS: Claimant Mrs. Mary Nell Williams is an employe of the Carrier at Birmingham, Alabama. Mrs. Williams is what is known as a "furloughed" employe in that she has acquired seniority under Agreement Rules, dating from October 11, 1951, has been "cut off" in reduction of forces and has acquired the status of a "furloughed" employe in accordance with Rule 22, hereinafter quoted.

Mrs. Williams was, under Agreement Rules, on November 18, 1954, assigned to the position of Cashier-Clerk, rate \$14.57 per day. This vacancy arose because Mr. F. P. Guerico, Chief Clerk, \$17.60 per day, was on vacation. During Mr. Guerico's vacation, his position was filled by Mr. S. M. Steen, Assistant Chief Clerk, rate \$16.70 per day. Mr. Steen's position was filled by Mr. O. Rosebrough, Cashier-Clerk, whose position Mrs. Williams, Claimant, worked from November 18 through December 3, 1954. This period included Thanksgiving Day, November 25, 1954, for which holiday Claimant was not paid.

Claimant, Mrs. Mary Nell Williams, was, under Agreement Rules, assigned from August 16, 1954, through September 17, 1954, to the position of Cashier, Ensley, Alabama (rate \$14.85 per day). Mr. Christian, the regular occupant of the position had, for the time being, been assigned to the position of Agent at East Birmingham, Alabama. This assignment of Mrs. Williams included Labor Day, September 6, 1954, for which holiday Claimant, Mrs. Williams, was not paid.

rest days of the position he is temporarily filling. If work on the two rest days of the position is included in a regular relief assignment, the extra or furloughed employee must give way to the relief man on those two days. The rest days of regular positions are different, according to service requirements. Therefore, extra or furloughed employees have no assigned rest days; they take whatever the rest days may be of the position they are temporarily filling. That is the only purpose of Rule 25 (h). Regardless of the duration of a temporary vacancy, the furloughed or extra clerk is performing "extra clerical work" under Rule 8, and he does not acquire the status of a regularly assigned employee until he is assigned by bulletin to a regular position as provided in the agreement.

If and when Claimant Williams is assigned by bulletin to a regular position under the rules of the agreement, she will become a regularly assigned employee. She will then be subject to the guarantee provisions of Rule 46 (f) (1) and the holiday pay provisions of Article II-Section 1. Until then, she is subject to Rule 8 and is to be paid only for days actually worked.

SUMMARY

(1) Article II-Section 1 of the agreement of August 21, 1954 applies only to regularly assigned hourly and daily rated employees—not to extra, furloughed, or unassigned employees.

(2) Claimant, during the period covered by this claim, was a furloughed clerk performing extra work under the provisions of Rule 8—captioned "Extra Clerical Work." She was not a regularly assigned employee.

(3) Article II-Section 1 of the August 21, 1954 agreement is clearly a supplement to the guarantee provisions of Rule 46 (f) (1) for regularly assigned hourly and daily rated employees, because its purpose is to extend their normal take-home pay of five days per week to weeks in which the seven designated holidays occur. Both Rule 46 (f) (1) and Article II-Section 1 are limited in their application to regularly assigned employees.

(4) The effective clerical agreement makes a definite distinction between the status of furloughed or extra employees and regularly assigned employees. There is nothing in the August 21, 1954 agreement specifying or implying that the term "regularly assigned hourly and daily rated employee" shall include furloughed or extra employees under any circumstances.

(5) The evidence of record positively shows that the Emergency Board in its report of May 15, 1954 and the parties in the agreement of August 21, 1954 deliberately excluded furloughed and extra employees from the holiday pay provisions.

The evidence does not support the allegation that Carrier violated the agreement in refusing to pay claimant the holiday allowance for Labor Day, September 6, 1954, and Thanksgiving Day, November 25, 1954. For the reasons stated, the claim is not valid under the rules and should be declined. Carrier respectfully requests that the Board so hold.

All pertinent facts and data used by the Carrier in this case have been made known to the employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim by a furloughed employee who did occasional work as a Clerk for the Carrier on the theory that when she worked as such she was a "regularly assigned employee."

We think her claim must be denied. A reading of Award 7430 needs no elaboration as a reason for denying the claim. See also Award No. 8254 announced herewith.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.