

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-3 and 4-A-1(i), when a furloughed employee was recalled from furlough and used to perform extra or unassigned service on the Group 2 Laborer's position of Mary D. Williams at Burma Yard Office, Philadelphia, Pennsylvania, Philadelphia Terminal Division.

(b) The Claimant, Mary D. Williams, should be allowed eight hours' pay for Saturday, January 24, 1953, because of this violation. (Docket E-895)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement, effectively May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Claimant Mary D. Williams was regularly assigned as a Group 2 Laborer at Burma Yard Office, Philadelphia, Pennsylvania, Philadelphia Terminal Division, tour of duty 8:00 A.M. to 5:00 P.M., with one hour meal period, rest days Saturday and Sunday. She has a seniority date on the seniority roster of the Philadelphia Terminal Division in Group 2.

But that, to the contrary, Rule 4-A-1 (i) specifically permits the Carrier to use extra or unassigned employees for work on days which are not a part of any assignment.

It is, therefore, respectfully submitted that the instant claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employee involved or to her duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Mary D. Williams, was a regular assigned Group 2 employee at the Burma Yard Office of the Pennsylvania Railroad during January, 1953, working five days a week, Monday through Friday. There was work to be done on Saturday, January 24, 1953. In an agreed statement of facts Carrier and Organization stipulate that the work to be done on Saturday, January 24, was extra work, not a part of Claimant Mary D. Williams' regular assignment; that at the time there was no "Extra List" or "Extra List Agreement" covering Group 2 employees at Burma Yard Office.

The carrier called in a furloughed employee. The claimant alleges the work being extra work, and there being no eligible extra employee available as there was no extra work, that it was the claimant's work at premium pay, and could not be allocated to a furloughed employee.

This is a matter of contract construction. Award 7079 is very similar and controlling. The sections to be considered are Rules 2-A-1 (e), 3-C-3, 4-A-1 (i), and 5-C-1.

As it was agreed that this was extra work, not part of a regular assignment, Rule 4-A-1 (i) would be applicable. Rule 4-A-1 (i) reads:

"(Effective September 1, 1949) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

This rule provides for extra employees, but there are no extra employees, as there are no extra boards established under Rule 5-C-1:

"Where extra employees are used extra boards will be established by agreement between the Management and the Division Chairman. The number of extra employees to be used and the manner in which they will work will be determined by written agreement between the Management and the Division Chairman."

Are there any exceptions to these two rules? There do not appear to be any. Rule 3-C-3 (b) provides for use of furloughed employees from this same type of work but only when the work is not done by senior employees. Here the claimant was a senior employee to the furloughed employee involved. Rule 3-C-3 (b) reads:

"Furloughed employees, who have notified the employing officer that they desire consideration for temporary work, will when available, be given preference on a seniority basis to all extra work, short vacancies or vacancies occasioned by the filling of positions pending the assignment by bulletin, which are not filled by senior employees, or as provided by agreement under Rule 5-C-1. Furloughed employees

failing to return to service under this paragraph will not forfeit seniority."

Rule 2-A-1 (e) does not apply, as this appears to apply to positions, not the type of work here in question. The work we have here, being purely extra work, non-repetitious, and of short duration.

The Agreement being violated the claimant will be compensated for 8 hours pay at straight time. Premium pay will not be awarded as no work was performed. Claim allowed.

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 Carrier violated the Agreement.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1958.

DISSENT TO AWARD 8568, DOCKET CL-7838

The majority errs in its construction of Rules 3-C-3 (b) and 4-A-1 (i).

Insofar as is here pertinent, Rule 3-C-3 (b) provides that, "Furloughed employees, who have notified the employing officer that they desire consideration for temporary work, **will when available, be given preference on a seniority basis to all extra work * * ***" (Emphasis added.) Since it is agreed that on the date in question the work involved was extra work, the furloughed employee, therefore, became the available unassigned employee and, not having had forty hours work that week, had preference to such work under Rule 4-A-1 (i) over "the" regular employee who is the claimant here. Seniority is not involved in this dispute.

For the reason stated, the award is in error and we dissent.

/s/ C. P. Dugan

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp