Award No. 8670
Docket No. CL-8198

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the Clerks' Agreement:

(1) When they required Larry Kness, Yard Clerk at Iowa Falls, Iowa to work six (6) consecutive days at pro rata rate of pay and refused to allow time and one-half rate, for March 13, 1954;

(2) When they required Ollie Slagle, Baggageman at Iowa Fall, Iowa, to work six (6) consecutive days at pro rata rate and refused to allow time and one-half rate, for March 15, 1954;

(3) That Carrier now be directed by appropriate Board Order to compensate Larry Kness for the difference between pro rata rate and time and one-half rate for eight (8) hours worked on March 13, 1954; and also allow Ollie Slagle the difference between pro rata rate and time and one-half rate for eight (8) hours on March 15, 1954.

EMPLOYES' STATEMENT OF FACTS: March 13, 1954, Larry Kness filed claim as follows:

"REPORT OF OVERTIME AND CALLS

March 15, 1954

Location: Iowa Falls, Iowa

NAME	OCCUPATION	Rate	Regular Assn. Hrs.	Actually Overtime Worked
Larry Kness	2nd Yard Clerk	$294.63	4 P. Midnite	4 P. Midnite

Overtime.....8 Hours.

the contrary, the parties appear to have wished, in the light of the Emergency Board's expressed desire, to provide for the Carrier a certain amount of flexibility in its operations along with appropriate protection of employes. Operational requirements sometimes demand changes in employes rest days. The parties could not have meant to provide flexibility under one part of their Agreement and in the above stated ways restrict or penalize the application of flexibility in another.

It appears that the main objective of Rule 65½'s guarantee was not to penalize the Carrier for changing employes' rest days in response to operating needs but to prevent the Carrier from laying off employes for brief periods during which their services might temporarily be dispensed with.

Thus, when the Agreement and its relevant rules are considered as a whole, we are led to the conclusion that the Carrier's position in this case is the correct one. In other words, in respect to the facts and arguments developed in this case, we think that the guaranteed 'week' of work and pay mentioned in Rule 65½ should be defined as the 'work week' mentioned and delineated in Rule 48½ (i). So defined, Geiger's work week contained the same number of days after the change in rest days as before; and his pay for such work week was not reduced."

In the presence of such a clear and unmistakable determination of this question under identical rules, the Carrier has steadfastly declined this claim and respectfully requests your Board to do likewise.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Before March 11, 1954, Claimant Kness regularly occupied a Yard Clerk position that worked Monday through Friday, with rest days Saturday and Sunday. By written notice dated February 28, 1954, Carrier unilaterally informed him that, effective Thursday, March 11, 1954, the rest day of his position would be changed to Sunday and Monday. Claimant then elected to remain on said position. During the calendar week beginning Monday, March 1, 1954, he worked Monday through Friday (March 1 through March 5) and rested on Saturday-Sunday (March 6-7). During the calendar week beginning Monday, March 8, 1954, he worked Monday through Saturday (March 8 through March 13) and rested on Sunday, March 14. During the calendar week beginning Monday, March 15, 1954, Claimant rested said Monday, worked Tuesday through Saturday (March 16 through March 20), and rested Sunday, March 21.

Before March 11, 1954, the other Claimant in this case, Slagle, regularly occupied a Baggageman position that worked Wednesday through Sunday, with rest days Monday and Tuesday. By written notice dated February 28, 1954, Carrier unilaterally informed him that, effective Thursday, March 11, 1954, the rest days of his position would be changed to Tuesday and Wednesday. Claimant then elected to remain on said position. During the calendar week beginning Monday, March 1, 1954, he rested Monday-Tuesday (March 1-2) and worked Wednesday through Sunday (March 3-7). During the calendar week beginning Monday, March 8, 1954, he rested Monday-Tues-

day (March 8-9) and worked Wednesday through Sunday (March 10 through March 14). During the calendar week beginning Monday, March 15, 1954, Claimant Slagle worked said Monday, rested on Tuesday-Wednesday (March 16-17), and worked Thursday through Sunday (March 18 through March 21).

There is no dispute over the facts that (1) when each Claimant's rest days were changed, neither position was re-bulletined or re-opened for bids; (2) during the period of transition from one pair to another pair of consecutive rest days each cliamant worked six consecutive days; (3) each claimant then filed request for the difference between the pro rata pay he received for the sixth day and the time and one-half rate for said day; (4) after a succession of conferences on both claims up to and including the highest officer designated by Carrier to handle such matters, said claims were finally denied by him in a letter dated August 5, 1954; (5) on December 27, 1955, the Third Division of this Board received written notitce of the Organization's intention to file an ex parte submission in support of each claim; and (6) said submission was received by this Division on January 24, 1956.

Three main issues are presented by these claims: (1) Are they barred from consideration as to merits because untimely filed under the provisions of Article V, Section 2, of the Chicago Agreement of August 21, 1954? (2) If not, should they be sustained because, contrary to a provision in the Agreement, Carrier changed Claimants' rest days by unilateral notice? (3) If not barred under (1) and if not to be sustained under (2), should the claims be sustained on their merits as involving violation of other portions of the Agreement by Carrier?

As to the issue of alleged untimely filing, the Parties have advanced arguments that are respectively the same in substance as those summarized in this Division's Award No. 8669. And the Board's ruling in the instant case is the same as in that Award, and for the same reasons. In other words, the Board here holds that the filing of the instant claims with this Division was reasonably within the time limit specified in Article V, Section 2, of the Agreement of August 21, 1954.

As to the second question posed above, Rule 46½ (k) (2) plainly states that when, in a situation not involving a reduction in work force, the Carrier proposes as necessary a change in previously assigned rest days, such change must be made jointly with the representatives of the affected employes. There is nothing in the record compelling the conclusion that (1) Claimants' rest days were changed jointly by Carrier and Claimants' representatives; or (2) said change was connected with a reduction in force. On the contrary. Therefore, the Board is moved to rule that Carrier ignored and in fact violated the above-mentioned Rule.

Because of this ruling the Board may not consider either of the instant claims on their basic merits. They must be sustained because of Carrier's unilateral action in a situation not shown to have been connected with a reduction of the work force.

In the light of the Organization's contentions as to merits it is clear that claim (3) in the instant case asks for compensation for the Claimants on the theory that they were made to work more than 40 hours and five days in their respective work weeks. The Board will sustain claim (3) as a penalty for violation of Rule 46½ (k) (2) but not on any basis involving the claim's merits, which are not considered here.

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 Carrier violated Rule 46½ (k) (2) of the Agreement.

AWARD

Claims (1), (2), and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January, 1959.