Award No. 9247
Docket No. CL-8833

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement at Muskogee, Oklahoma, on July 8, 11, 12, 13, 14 and 15, 1955, when,

(a) It required Mr. J. B. Beatty to work sixteen hours in a 24-hour period at straight time rate, and,

(b) Carrier shall now be required to pay J. B. Beatty the difference between straight time and punitive time for eight hours on each of these dates.

EMPLOYES' STATEMENT OF FACTS: Beginning July 5, 1955, Mr. J. B. Beatty was employed as a vacation relief employe, relieving J. J. Harris, Janitor, in the Operating Department, Seniority District No. 2, hours 4:00 P. M. to 12:00 M.N., while Harris was on vacation from July 5th to 18th, 1955 inclusive.

On July 8, 11, 12, 13, 14 and 15, 1955, Mr. J. B. Beatty was also used to protect vacation vacancy on position of Oil House Man, Mechanical & Store Department, Seniority District No. 4, hours 5:00 A. M. to 2:00 P. M., thus working 16 hours on each of these dates for which he was paid straight time.

POSITION OF EMPLOYES: The material facts in this case are not in dispute, and involve the Carrier's working an employe 16 hours per day at straight time.

There is in evidence an agreement between the parties bearing effective date January 1, 1953 in which the following rule appears and which the Employes cite as being in violation:

Rule 37, Sections (a) and (h), of the Agreement provide:

At the time it was known that the janitor in the General Office Building would be on vacation during the perioid July 5 to 18, 1955, Mr. Beatty was contacted to see if he desired to fill the vacancy. He immediately stated he desired to fill the vacancy. On July 8, or three days after he had been employed as a vacation relief worker to relieve the janitor at the General Office, Mr. J. C. Hancock, Oilhouse Man, started his vacation. As previously stated, there was not a furloughed employe available in the same district. The company could have employed a person for the specific purpose of filling this position while the regular assigned occupant was on vacation and compensated such employe at the regular rate of the position. Rather than do this, Mr. Beatty was asked if he desired to protect the position. He readily stated he desired to fill the positioin and accepted all the conditions of the position, it being understood that he would receive the regular rate of the position.

The claimant when employed as a vacation relief worker relieving the janitor at the General Office, accepted all the conditions of that position, and when employed as a vacation relief worker relieving the oilhouse man accepted all the conditions of that position.

As previously stated, the claimant held no right in either seniority district and there was no obligation to use him to fill one or both of the positions. By the same token it was optional with him as to whether or not he fill one or both of the positions.

We wish to call attention that the claimant performed the work in separate seniority districts and also separate and distinct seniority groups to which such work belonged. Position as janitor is a Group 2 position and position as oilhouse man is a Group 3 position.

It is our position that when the claimant filled both positions he accepted the conditions of both positions, and further that such manner of handling under the circumstances which existed did not violate any of the articles of the current agreement. It is also our position that such manner of handling conforms to the meaning and intent of the Vacation Agreement.

Since this is an ex parte case, this submission has been prepared without seeing the employes' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission.

All data submitted herewith in support of the Carrier's position has been presented to the employes or their duly authorized representative and is hereby made a part of the matter in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant a furloughed shop laborer, was employed as a vacation relief employe to perform two jobs. He relieved a janitor in the Operating Department working from 4:00 P. M. to 12:00 midnight, and he also filled a vacation vacancy as Oilhouse Man in the Mechanical and Store Department working from 5:00 A. M. to 2:00 P. M., thus working sixteen hours within a 24-hour period for six different days for which he was paid at straight time. The original claim included a request for payment to available store laborer for a day's pay for each day he wasn't used. This latter claim for the store laborer was withdrawn and we are not

concerned with it in this case. In the instant case the Claimant requests time and one-half for work performed in excess of eight hours on the days in dispute. He was paid straight time so actually the claim in this case is for the half time for the six days where the Claimant worked sixteen hours within a 24-hour period. The Carrier contends that under the language in the Vacation Agreement this Claimant is entitled to straight time only of the work performed. We do not accept the Carrier's contention as we believe the terms of the Agreement are controlling and not the terms of the vacation plan for the reasons discussed and adopted in Award 2340. According to the record, the Carrier at no time asserted that the Claimant was not covered by the Clerk's Agreement, but argued that the Vacation Agreement was controlling, and we think the latter argument is without merit for reasons already stated. The Clerks' Agreement provides that time worked in any day in excess of eight hours will be considered overtime and paid for at the rate of time and one-half. Any day means a 24-hour period from the starting time of the first assignment. Admittedly the Claimant herein did work more than eight hours within a 24-hour period on six different days. He should have received punitive time for the eight hours on the six days in question. We fail to see that working two different jobs within the 24-hour period makes any difference, as the Agreement clearly states that punitive pay is to be reckoned on hours and not jobs.

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 the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1960.