

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the current Clerks' Agreement May 7 and 8, 1955, when it failed to compensate Mr. S. L. Grimes at the overtime rate for work he was required to perform seven consecutive days of his work week.

(2) That Mr. S. L. Grimes be paid the difference between the straight time rate he was paid and the time and one-half rate he was entitled to for May 7 and 8, 1955.

EMPLOYEES' STATEMENT OF FACTS: On the dates in question, Mr. S. L. Grimes, whose Group 1 seniority dates from September 29, 1944, was furloughed in Group 1 and regularly assigned in Group 2 to a T&E Caller position, 4:00 P. M., to 12:00 M. N., Tuesday through Saturday, Sunday and Monday rest days, Texarkana Yard office. Beginning Monday, May 2, 1955, Mr. Grimes worked seven consecutive days in Group 1, as follows: Monday, Tuesday and Wednesday, Bill Clerk, Texarkana Local Freight Office, 8:00 A. M., to 5:00 P. M., one hour for lunch; Thursday, Friday, Saturday and Sunday, Car Clerk, Texarkana Yard Office, 7:00 A. M., to 3:00 P. M. He was paid the straight time rate for the work he performed May 7 and 8, his sixth and seventh consecutive days work that week.

Mr. Grimes rendered overtime slips (form 3746), claiming the overtime rate for May 7th and 8th, account of being used the sixth and seventh consecutive days in that week, which was denied by Division Superintendent W. G. Hazelwood, in his letter of May 12, 1955, to Mr. Grimes. (Employees' Exhibits A-1, A-2 and A-3)

Claim was then filed with First Assistant Manager Personnel M. L. Erwin on July 7, 1955, and was denied by Mr. Erwin on September 1, 1955. (Employees' Exhibits B-1 and B-2)

The claim was then appealed to Manager Personnel L. C. Albert on October 26, 1955, and was denied by him on October 28, 1955. Mr. Albert has been

of that position. After working Monday, August 7, 1950, on the Utility Clerk position, he protected the position of the Assistant Rate and Transit Clerk Tuesday through Saturday. That position was regularly assigned Tuesday through Saturday, with Sunday and Monday as rest days. When he was called to protect this latter vacancy he accepted all the conditions of that position, including the rest days thereof. Having worked Tuesday through Saturday, the five working days of that work week, his rest days were Sunday and Monday. Saturday was not a rest day of the position which he was protecting and consequently he was entitled only to straight time rate for Saturday."

Thus the facts were very similar to those in the present case.

Award 7032 (Referee Carter) also covers a similar case, with the Opinion reading, in part:

"When Claimant worked Monday and Tuesday, June 19 and 20, on Von Pertz's position he thereby accepted all the conditions of that position including its days. But he only worked two days on that position. He earned no rest days in the work week of the position. He then protected the position occupied by Draskovich, Wednesday through Sunday, June 21 through June 25. When he was called to protect this latter vacancy he accepted all the conditions of that position, including the rest days (Monday and Tuesday) hereof."

The Carrier respectfully submits that the claim clearly is not supported by the agreed rules, and should be denied.

All data herein has been presented to representatives of the Employees in correspondence or in conference. (Exhibits not reproduced)

OPINION OF BOARD: Claimant had a seniority date of September 29, 1944, in Group 1 and working extra in such Group during period of claim. He was used on Monday, Tuesday and Wednesday, May 2, 3 and 4, 1955, on position of Bill Clerk, hours 8:00 A. M. to 5:00 P. M., rest days Saturday and Sunday.

On Thursday, May 5, 1955, he protected the assignment of a Car Clerk on vacation, hours 7:00 A. M. to 3:00 P. M., rest days Monday and Tuesday. He continued on such assignment until May 15, 1955, and observed the rest days thereof on Monday and Tuesday, May 9 and 10. Consequently, he moved from the extra list to an assignment of five days or more on Thursday, May 5, assuming the conditions of such assignment, including the rest days thereof, in accordance with the exception to Rule 32-5. Similar disputes were before the Board and denied in Awards 6973 and 7032. They are controlling here. Claim will, therefore, be denied.

There is no merit to Carrier's contention that the Employees' Ex Parte submission must be referred to the Board within the time limits contained in Article V, Section 1(c), of the August 21, 1954, Agreement. The notice of intent to file an Ex Parte submission is sufficient. Award 9246.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1961.