

Award No. 10170

Docket No. CL-10072

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, 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 when at Atlanta, Georgia, on Saturday, September 1, 1956, it did not allow Mrs. Maudie Rawlins to work the position to which she was assigned; that the Carrier further violated the Agreement on Saturday, September 1, 1956, when it required Mrs. Marie Little to work on her rest day at pro rata rate.

(b) Mrs. Maudie Rawlins shall now be compensated at pro rata rate of the position she was entitled to work on Saturday, September 1, 1956, namely \$14.87; Mrs. Marie Little shall now be compensated the difference between pro rata rate she was paid and punitive rate she should have been paid for work performed on her rest day, Saturday, September 1, 1956.

EMPLOYES' STATEMENT OF FACTS: 1. The Employes and positions involved herein are in the office of Agent, Atlanta, Georgia. Mrs. M. E. Harris was the regular occupant of the position of Stenographer, which had a work-week beginning on Monday and ending on Friday, Saturday and Sunday being the rest days. Mrs. Nell Mays was the regular occupant of the position of Expense Clerk, which had a work-week beginning on Monday, Saturday and Sunday being rest days. Mrs. Marie M. Little was the regular occupant of the position of Comptometer Operator, her work-week beginning on Tuesday, rest days being Sunday and Monday. Mrs. Maudie Rawlins was a furloughed or unassigned Clerk.

2. On Monday, August 27, 1956, Mrs. M. E. Harris, Stenographer, began a week's vacation. Mrs. Nell Mays, Expense Clerk, was re-assigned to fill Mrs. Harris' position (same work-week). Mrs. Marie Little, Comptometer Operator, was re-assigned to the position of Expense Clerk, vice Mrs. Mays, effective Tuesday, August 28, 1956, working this position Tuesday, Wednesday, Thursday and Friday (August 28, 29, 30 and 31).

3. Effective Tuesday, August 28, 1956, Mrs. Maudie Rawlins, furloughed Clerk, was temporarily assigned to the position of Comptometer Operator, vice

Mrs. Little's work week begins on Tuesday. She performed no service on Monday, August 27, her second rest day. Other clerks, whose duties include preparing expense bills, performed the expensing on August 27 and Mrs. Hayes' position of expense clerk was not filled on that date, this being in accordance with Rule 8(a) (2). As Mrs. Little worked the expense clerk position only four days, Tuesday through Friday, reverting to her regular assignment as comptometer operator on Saturday, it is perfectly clear that she worked only five days in her work week beginning Tuesday, August 28. Moreover, as Friday, August 31, was the last day of the temporary vacancy in the expense clerk position, she was entitled to return to her regular assignment on the next assigned work day, which in this case was Saturday.

The Board will observe that in this particular case, although the rest days of the expense clerk position and the comptometer operator position were different, Agent Taylor rearranged the regular force without disturbing the rest days of the regular occupant. In other words, the four days which Mrs. Little worked as expense clerk were **assigned work days** of both the expense clerk position and her regular comptometer operator position. Therefore, the rest days of the two positions were not involved in the rearrangement. It will be seen that, if Mrs. Little had not been allowed to revert to her regular assignment on Saturday, September 1, she would have worked only four days during her work week beginning Tuesday, August 28, and she would have been off three days (Saturday, Sunday, and Monday).

The parties incorporated Rule 27(b) into the effective agreement when the 40-hour work week was established on September 1, 1949. The second paragraph of this rule specifies that employees worked on more than five days in a work week shall be paid one and one-half times the basic straight time hourly rate for work on the sixth and seventh days of their work week, etc. Claimants did not work more than five days in their work weeks.

From the foregoing, it is manifest that Saturday, September 1, 1956, was the fifth day of Mrs. Little's work week, not her "rest day" as alleged in the employees' statement of claim. Therefore, she was properly used on her regular assignment at the straight time rate of pay.

As Mrs. Little worked her regular assignment on September 1, there was no temporary vacancy on that date in the comptometer operator position. Thus, the claim of Mrs. Rawlins is without foundation. The fact is that the comptometer operator position was temporarily vacant for only four days, August 28, 29, 30, and 31, while Mrs. Little was working as expense clerk. Mrs. Rawlins was used on the comptometer operator position for those four days, but she could not be used in preference to the regular occupant on September 1.

In the handling of the claim on the property, the employee representatives alleged that carrier violated Rule 8(a) (5). Paragraph (5) has no application, as Mrs. Rawlins was not "displaced" during the period of the vacancy. The temporary vacancy terminated on Friday, August 31. As Mrs. Little simply returned to her regular assignment on Saturday, September 1, 1956, the claims in behalf of Mrs. Little and Mrs. Rawlins are not supported by the agreement. Carrier respectfully requests that the Board so decide.

All evidence here submitted is known to employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In August, 1956, Mrs. M. E. Harris, Mrs. Nell Hayes, and Mrs. Marie Little were regularly assigned clerical employees of the Southern Railway Company at Atlanta, Georgia. Mrs. Harris was a Stenogra-

pher, Mrs. Hayes an Expense Clerk and Mrs. Little a Comptometer Operator.

On Monday, August 27, 1956, Mrs. Harris took a vacation for 5 days and in accordance with Articles 10 and 12 of the Vacation Agreement and Rules 8, 17 and 46 of the Clerks' Agreement, the agent in charge of the Atlanta Station designated Mrs. Hayes to fill the position of Mrs. Marris. Mrs. Maudie Rawlins was called in as a furloughed clerk to fill the vacancy of the comptometer operator assignment and she worked Tuesday, Wednesday, Thursday and Friday and was told that they would not need her on Saturday.

It is the contention of the employes that Mrs. Rawlins should be compensated for her work on Saturday, which she did not perform and that Mrs. Little should be compensated for the difference between the pro rata rate she was paid and punitive rate she would have been paid for work performed on her rest day, Saturday, September 1, 1956.

There is no merit to the contention that Mrs. Rawlins was displaced and we can find no violation of the rules. When the regular occupant returns to her assignment the employe who is temporarily filling the position is not displaced under schedule rules but the temporary vacancy is ended and gives way to the regular occupant. No person displaced Mrs. Rawlins during the period of the vacancy at all.

The evidence supports the Carrier's position that Mrs. Little worked only the 5 assigned days of her work week and that she was properly compensated for work which she performed on Saturday, September 1.

There is nothing in the Agreement to guarantee any number of days per week to furloughed or extra employes filling temporary vacancies which do not require bulletining. See Awards Third Division, 6819; 6561; 6819; and 6973.

We can find no violation of the Agreement and certainly in the absence of a definite violation of the Agreement the award must be denied. See Awards 9565 and 9551. The claims are, therefore, denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1961.