

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

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

1. The Carrier violated the Clerks' Rules Agreement when it failed to call the regular occupant of Roundhouse Clerk's Position No. 32 at Dubuque, Iowa for work regularly assigned to and performed by clerical employees in Seniority District No. 56 seven days per week and assigned the work to the Roundhouse Foreman and Yardmaster, who are employees outside the scope and application of the Clerks' Rules Agreement, and to employees holding seniority in another seniority district.

2. The Carrier shall now be required to compensate Employee Charles Pullen at the time and one-half rate of Roundhouse Clerk Position No. 32 for eight (8) hours on each of the following days: June 23 and 24, 1956.

EMPLOYES' STATEMENT OF FACTS: Employee Charles Pullen is regularly assigned to Roundhouse Clerk Position No. 32 at Dubuque, Iowa. His hours of service are from 7 A. M. to 4 P. M. Monday through Friday and his days of rest are Saturday and Sunday. The principal duties regularly assigned to Position No. 32 are as follows:

Calling train and engine crews

Check engine house register

Mark up enginemen's train board

Check all releases of road crews for train dispatcher's train board

holding that under circumstances where the regular occupant of a "7-day" position is absent from service, there is no rule prohibiting the blanking of the position. In this regard attention is directed to the provisions of Third Division Award 6691 and particularly the following which is quoted from the Opinion of the Board:

"There is no rule in the 40-Hour provisions of the Agreement which prohibits blanking a position when the occupant is absent because of illness, or other reason of his own. Nor do we find in the Agreement which was in effect prior to September 1949, any rule that prohibit blanking a position which was vacant for such reason. To the extent that there were Awards of this Division which ruled that positions could not be blanked because they were necessary to continuous operation, such rulings are not applicable under the 40-Hour Agreement. (Award 5589). Moreover, even under the Agreements effective prior to September, 1949, the Carrier had the right to blank positions in cases such as here, unless there was a specific rule limiting that right."

In the Opinion of the Board in Award 7256 it was stated:

"No specific provision in Rule 37 of the Agreement makes it mandatory upon the Carrier to fill temporary vacancies when the occupant of a position lays off of his own accord. It has been concluded that the Forty Hour Week amendments do not provide a guarantee against blanking a position in these circumstances."

The Carrier respectfully requests a denial award.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintained a position of Roundhouse Clerk, Position 32, at Dubuque, Iowa. It was a "7-day" position.

The issue is whether or not the Carrier was required to call the claimant, the regularly assigned Roundhouse Clerk, to work on a regularly assigned relief position on his rest days when the regular occupant of the rest day relief assignment was absent due to illness.

When the regular occupant of the rest day relief assignment failed to report for work due to illness on June 23 and 24, 1956 a temporary vacancy occurred. Carrier did not have to fill the position under Rule 9(g). In brief, it could have blanked the position.

In the instant case although Carrier contends that Roundhouse Clerk Position 32 was not filled it admits inter alia that certain items of work were performed by yard clerks not in the same seniority district and by a roundhouse foreman which ordinarily the roundhouse clerk would have performed if he were on duty.

It is clear that certain items of work normally and regularly performed by the regular or relief occupant of Position 32 during the regular hours of assignment were performed on June 23 and 24, 1956.

Carrier contends that as a result of reduced locomotive requirements brought about principally by dieselization, there was little need for Position 32 to be filled on Saturday and Sunday and that actually the position was abolished on February 16, 1957. This contention does not change the fact that Roundhouse Clerk Position 32 was a "7-day" position on June 23 and 24, 1956, and for some time thereafter.

The work in question had been lodged with the Position and had become a part of the duties incident to that position. The Carrier could not remove it from the limitations of one seniority district and assign it to employes in another even if such employes were covered by the same agreement.

Claimant, the regular occupant of the Position, should have been called.

With respect to pay for the two days in question, the proper rate is the pro rata rate, in accordance with many previous awards of this Board.

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December 1961.

CARRIER MEMBERS' DISSENT TO AWARD 10224, DOCKET CL-9980

The Majority has erred in sustaining this claim. The record has been made, and it will show for all time to come that the award is not only erroneous but that the conclusions of the Majority were reached only after ignoring or disregarding the many facts and precedents which dictated a denial award.

No useful purpose would be served to detail here the many fallacies in the decision of the Majority. Suffice it to say that the Carrier Members, after seeing the Majority's proposed decision, brought it up for re-argument. At the rehearing, the Majority made no attempt to justify the proposed decision, nor would they consider changing it.

The Agreement between the parties, and awards on this very property, among other things, dictated a denial award. Such total disregard for Agree-

ments and precedents is inexcusable, and is diametrically opposed to the intent and purposes of the Railway Labor Act. Award 10224 is a nullity, and should be so treated.

O. B. Sayers,

G. L. Naylor,

R. A. De Rossett,

R. E. Black,

F. J. Gobel, (Per REB)