

Award No. 10282
Docket No. CL-10011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

(1) That Carrier violated rules of our Agreement dated February 1, 1951, and provisions of the August 21, 1954 National Agreement to which both Carrier and Brotherhood were parties, when it improperly utilized the services of Mrs. Nina Crouch to relieve G. M. Adams, Baggage Clerk, Union Depot, Shreveport, Louisiana, on his designated rest days during April and May, 1956.

(2) That Mr. Adams be paid for wage loss sustained, i.e., one day's pay at overtime rate on April 3, 4, 10, 11, 17, 18, 24, 25, May 1, 2, 29 and 30, 1956.

EMPLOYEES' STATEMENT OF FACTS: Mr. Adams, at the time of this claim, was regularly assigned to a seven day per week position as Baggage Clerk, Union Depot, Shreveport, Louisiana; assigned work days, Thursday through Monday; rest days, Tuesday and Wednesday.

Prior to August, 1954, Mr. Adams had been assigned appropriate relief on his rest days; however in August, 1954, account reduction in force, the regular relief position was abolished, leaving Mr. Adams no assigned relief on his rest days. This reduction forced Mrs. Nina Crouch, Relief Clerk, to a furloughed status, as there was no regularly assigned position left for her.

Rule 17(b) of the current Agreement reads:

"(b) Employees desiring to protect their seniority rights and to avail themselves of this rule must within five (5) days from the date actually reduced to the furloughed list, file their name and address in writing both with the proper official (the officer authorized

OPINION OF BOARD: The important events in this case may be summarized chronologically, as follows:

August 11, 1954. Mrs. Nina Crouch, Relief Ticket Clerk, was furloughed due to a reduction in force.

August 13, 1954. In accordance with Rule 17(b), Mrs. Crouch advised the Carrier, in writing, that she desired "to be carried on the extra board of the KCS & GT Co. for extra work and retain my seniority in case a regular job becomes available." Rule 17(b) provided:

"(b) Employees desiring to protect their seniority rights and to avail themselves of this rule must within five (5) days from the date actually reduced to the furloughed list, file their name and address in writing both with the proper official (the officer authorized to bulletin and award positions) and the Local Chairman or forfeit all seniority rights."

The record reveals some disagreement concerning the delivery of a copy of Mrs. Crouch's letter to the Brotherhood. The Local Chairman stated that a copy was not forwarded (and there is nothing on the face of the original to indicate that it was). The Carrier quotes Mrs. Crouch as stating "My recollection now is that at that time I made 3 copies of this notice with copies going to former Superintendent Blaydes and a copy going to the Local Chairman at the KCS Yards."

On the basis of this limited record we see no way to resolve this question other than that adopted by the General Chairman who, on October 6, 1956, advised the Carrier that "We are not questioning the fact that Mrs. Crouch complied with Rule 17(b) of the current Agreement when she was reduced to a furloughed status."

Subsequent to August 11, Claimant Adams worked seven days a week as Baggage Clerk including the balance of 1954, all of 1955, and part of 1956.

August 21, 1954. The parties entered into a new (national) agreement. Article IV, Section 1 gave the Carrier "the right to use furloughed employes to perform extra work, and relief work on regular positions during absences of regular occupants. . ." provided the furloughed worker "signified in the manner provided in paragraph 2" his desire to be used. Section 2 declared that a furloughed employe who wanted to be considered for extra and relief assignments "will notify the proper officer of the Carrier in writing, with copy to Local Chairman. . ." This Article IV rule, under the Agreement, was to become effective November 1, 1954 (except on Carriers which elected to "preserve existing rules or practices" and so notified the employe representatives by October 1).

April 3 and 4, 1956. Mrs. Crouch was assigned to relieve Claimant on his two rest days. She received similar relief assignments on other days in April and May and other months, twenty-nine days in all. (On May 15 and 16, 1956 a newly hired man filled Adams' post; subsequently the Carrier agreed to pay Adams for these days at pro rata rate.)

Adams protested Mrs. Crouch's assignment and submitted a claim for overtime pay, stating "Account no relief clerk assigned to relieve me as I am incumbent to this position and am entitled to work this date account no assigned relief position to relieve me."

October 11, 1956. While denying that the assignment of Mrs. Crouch to fill in for Adams on rest days violated Article IV, as alleged by the Brotherhood, the Carrier issued instructions to "all concerned" that IV, 2 notifications be submitted.

October 17, 1956. In accordance with the Carrier's October 11 instructions, Mrs. Crouch submitted a written statement that she desired "to be carried on the extra board and seniority roster of The Union Depot Forces at Shreveport KCS & GT Co. to perform extra and relief work . . ."

The Brotherhood argues, in essence, that (1) Provisions of Article IV of the 1954 national agreement became applicable to this Carrier's employees on November 1, 1954; (2) Section 2 requires that an employee give written notice of availability for extra or relief work; (3) The Carrier has no right to assign relief work to a person who has failed to give the required notice; (4) Since Mrs. Crouch's notification was not submitted until October 17, 1956, all her assignments prior to that date were improper; (5) Claimant Adams is therefore entitled to overtime pay for days on which he would have worked had it not been for Mrs. Crouch's improper assignments.

The crucial questions in this case, in our judgment, are (1) Did Article IV, Section 2 require all employees on furlough on November 1, 1954 (effective date) to submit written notices on or after that date in order to become eligible for extra or relief assignments?; (2) If not, was Mrs. Crouch's August 1954 notice sufficient to qualify her for such assignments after November 1, 1954?

The Carrier argues, preliminarily, that Article IV does not completely bar Management from offering tag end rest day assignments to furloughed persons who have retained seniority but who have not made themselves available for such work by submission of a IV, 2 letter. (In other words, if the Carrier needs people for these fill-in positions, and if no furloughed employees have submitted IV, 2 notices, Management is not prevented from asking — not forcing — a furloughed employee to work.) That question, however, need not be decided here in order to resolve Mr. Adams' claim.

What of Article IV? It seems clear, at least in the case of this Carrier, that the principle purpose served by this new provision was to give employees the right to decline temporary or part-time assignments while on furlough — a right not previously enjoyed under 17(b). Notice of availability for these assignments, moreover, was to be given to the Carrier in writing with a copy to the Local Chairman. Similarly, notice of withdrawal of availability was to be submitted in writing.

While these provisions became effective November 1, 1954, there is nothing in Article IV which requires a notice of availability to be submitted on any given date. There is no reason to suppose, moreover, if the Carrier and the Local Chairman both received prior written notice which effectively conveyed the necessary information, that the parties intended a second duplicate notice to be filed.

It seems likely, in our opinion, that had there been a mutual understanding that IV, 2 required all employees furloughed on November 1 to file new or current notices, either one or both of the parties would have so informed affected workers. Yet apparently this was not done. Neither the Brotherhood nor the Carrier advised Mrs. Crouch or similarly situated workers that a new letter would be required if relief assignments were desired. Moreover,

there is no evidence that any other furloughed employee or group of furloughed employees were aware of such requirement and acted to update their pre-November notices in order to comply with IV, 2.

What of Mrs. Crouch's 1954 notice? Was it sufficiently clear and did it conform to the basic requirements of Article IV? In our judgment the evidence compels an affirmative answer:

1. Article IV requires that notice be furnished the "proper Carrier officer, with copy to the local chairman." Mrs. Crouch's letter was submitted to two Carrier officials and, as noted above, the Brotherhood is not contesting the validity of her 17(b) notice (which required that a copy be sent to the local chairman).

2. Article IV calls for notification of availability for "extra and relief work." While she mistakenly referred to a non-existent extra "board", Mrs. Crouch's position was clearly expressed: "I desire to be carried on the extra Board of the KCS & GT Co. for extra work . . ." (Interestingly, her October 17, 1956 letter, whose validity has not been challenged, is couched in almost identical terms: "I desire to be carried on the extra board and seniority roster of the Union Depot Forces at Shreveport, KCS & GT Co., to perform extra and relief work and I am available for same . . .")

In sum, it is our conclusion that this claim must be denied since (1) Mrs. Crouch's August 1954 notice fulfilled the notice requirements of Article IV as well as Rule 17(b), and (2) Article IV did not require a new notice from employees who had already made their positions clear and fulfilled its requirements.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 20th day of December 1961.