

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Eugene Russell, 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 Monday, April 22, 1957, it required Miss A. K. Higginbotham, Comptometer Operator, to work the second of the two assigned rest days of her work week and compensated her at pro rata, or straight time rate, instead of rate of time and one-half.

(b) Claimant, Miss A. K. Higginbotham, shall now be compensated the difference between what she was paid and proper rate of time and one-half the rate of \$18.50 for Monday, April 22, 1957.

EMPLOYES' STATEMENT OF FACTS:

1. On the date claim arose, Claimant Higginbotham was assigned by bulletin to the position of Comptometer Operator with assigned work week of Tuesday through Saturday, Sunday and Monday being rest days. Claimant Higginbotham worked her position of Comptometer Operator Tuesday, April 16, Wednesday, April 17, Thursday, April 18, Friday, April 19, and Saturday, April 20, 1957.

2. Claimant observed the first rest day of the work week of her position, Sunday, April 21, 1957. On the second assigned rest day of her work week, Monday, April 22, 1957, Claimant was required to work the position of Stenographer in lieu of Mrs. L. M. Loyd who was on vacation. Mrs. Loyd's position was assigned a work week of Monday through Friday, Saturday and Sunday being rest days. Claimant Higginbotham worked Mrs. Loyd's position of Stenographer Monday, April 22, Tuesday, April 23, Wednesday, April 24, and Thursday, April 25, 1957. Mrs. Loyd returned from vacation on Friday, April 26 and resumed duty on her position of Stenographer. Claimant Higginbotham returned to her bulletined position of Comptometer Operator on Friday, April 26 and worked the position that day and, also, on Saturday, April 27, 1957, after which, she observed the rest days of the Comptometer Operator position, Sunday and Monday.

Moreover, Rule 10 (b) specifically excepts the payment of overtime rates for service in excess of 5 days or 40 hours 'where such work is performed by an employe due to moving from one assignment to another.' And the Claimant in this case clearly moved from his regular switching clerk assignment to fill the temporary vacancy on a different assignment."

As in the case covered by Award 6561, although Miss Higginbotham worked more than five days in a period of seven consecutive days, it was clearly due to moving from one assignment to another. The work weeks of the two assignments involved were different. As each day worked by claimant during the period involved was an assigned work day of the position she was filling, Monday, April 22, 1957, obviously was not a rest day of the assignment she was occupying.

The employees' interpretation of the phrase "moving from one assignment to another," as used in Rule 27 (b) of the effective agreement, is contained in the following paragraph of their letter of October 9, 1957 (carrier's Exhibit A-3):

"Claimant Higginbotham was not moving from one assignment to another. The phrase 'moving from one assignment to another' does not apply to an employe when that employe is working a temporary vacancy on his or her rest day. It is applicable only where a regularly assigned employe moves from one assignment to the other in the exercise of seniority bidding or displacement rights. In this case the claimant retained her regular assignment and did not acquire rights to the position on which she was temporarily relieving a regularly assigned employe."

It is evident that the employees have completely overlooked the fact that the Third Division has held in a number of previous decisions that the rule here in dispute is not subject to the interpretation sought by the employees in this case.

As claimant was properly compensated at the higher straight time rate of pay for the service performed on the work days of the stenographer assignment, the claim that the agreement was violated and that Miss Higginbotham be paid the difference between time and one-half and straight time rate received for April 22, 1957 is not valid and should be denied in its entirety. Carrier respectfully requests that the Board so decide.

All evidence submitted in support of carrier's position is known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Board must necessarily sustain the position of the Carrier in this case and holds that employe, Miss A. K. Higginbotham, was properly compensated for work on the days involved in this dispute in accordance with the terms of the Agreement.

In Award 6561 (adopted April 26, 1954), the rest days of Clerk R. C. Myers' regular assignment were Saturday-Sunday, and in filling a temporary vacancy in another assignment with different rest days he worked more than five consecutive days including Saturday-Sunday, February 18 and 19, 1950. The Board held these two days were work days (not rest days) of the Assign-

ment Mr. Myers was temporarily filling and denied the claim for pay at the time and one-half rate in lieu of straight time rate allowed. Rejecting the contention that Rule 33(d) is applicable and supersedes the exception in Rule 27(b), the Board said:

"This Division has repeatedly ruled that the specified rest days are an integral part of the work week of each bulletined assignment, that they are not attached to the individual employe so that he may carry them with him as he moves from one assignment to another. Moreover, Rule 10 (b) specifically excepts the payment of overtime rates for service in excess of 5 days or 40 hours 'where such work is performed by an employe due to moving from one assignment to another.' And the Claimant in this case clearly moved from his regular switching clerk assignment to fill the temporary vacancy on a different assignment."

"NOTE: Rule 10(b) became Rule 27(b) of the agreement revised as of June 1, 1952."

In **Award 6973**, furloughed Clerk J. L. Cooper, at Macon, Georgia, freight agency, worked six consecutive days Monday through Saturday on two different clerical assignments. The Board held that Saturday, August 12, 1950, was a work day of the assignment he was temporarily filling for 5 days while the regular occupant was on vacation, and denied the claim for pay at time and one-half rate for that day.

In its essential aspects, this claim is not distinguishable from the claim which led to our Awards 6561 and 6973 **between these same parties**. We see no valid reason for reaching a different result in this case, and accordingly, hold that the instant claim lacks merit.

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 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 3rd day of May 1962.