

Award No. 10640
Docket No. CL-10069

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) Carrier violated the rules of the current Clerks' Agreement when on November 17, 18, 22 and 23, 1956 it required and permitted Mr. E. P. Long to work in excess of forty (40) hours during his regular assigned work week of November 12, 1956 to Friday, November 16, 1956 and during his regular work week of Saturday, November 17, 1956 to Wednesday, November 21, 1956.

(2) Carrier now be required to pay to Clerk E. P. Long the difference between pro rata rate and punitive rate of pay assigned to position of East Wheel Clerk T-249, said rate of pay being \$16.53 per day.

(3) Carrier now be required to pay to Clerk E. P. Long the difference between pro rata rate and punitive rate of pay assigned to position of Assistant Chief Clerk T-2255, less difference he was paid at pro rata on position of East Wheel Clerk T-249, said rate being \$17.38 per day.

EMPLOYEES STATEMENT OF FACTS: (1) Clerk E. P. Long is regularly assigned to East Wheel Clerk position T-249, working assigned hours 4:00 P. M. to 12:00 midnight, daily Monday through Friday with Saturday and Sunday as rest days.

(2) Mr. B. F. Alsobrook is regularly assigned to position of Assistant Chief Clerk T-2255, working assigned hours of 2:00 P. M. to 10:00 P. M. Saturday through Wednesday with Thursday and Friday as rest days.

(3) At 4:00 P. M. Friday, November 16, 1956, Chief Clerk King approached Mr. Long and advised that Mr. Alsobrook desired to take a week of his vacation during the week of Saturday, November 17, 1956 through Wednesday, November 21, 1956 and told Mr. Long that he would be unable to relieve Mr. Alsobrook unless he could find someone to work his position. Mr. Long was called and used to fill such vacation assignment. He worked

as Carrier's Exhibits 2-A through 2-E. That correspondence shows that the accepted principle on this property in connection with the changing of the rest days on a particular assignment is this: Effort is to be made to keep the regular occupant from losing days, rather than from gaining days; because he is hurt when he loses days but is not hurt when he gains days. If the change causes him to gain a day or two, he does not receive any penalty pay; but, if the change causes him to fail to get five days pay in a calendar week, he is compensated under the guarantee rule. To the extent that Awards on the subject of changing rest days on a particular assignment have a bearing on the present question, that agreed principle on this property should be substituted for those Awards as influencing the decision of the present question.

That principle, too, denies all the claims in this case; because Mr. Long was handled in line with that principle. Indeed, as already observed, it was our understanding that the basic dispute in this case, which was discussed again in connection with those cases involving the change of rest days, was adjusted by the agreement on that principle and we were suprised when this case was subsequently referred to your Board. However, we see now that the Brotherhood does not accept that agreed principle as applying to the change of rest days which occurs when a man moves from one assignment to another, but accepts it only as applying to a change of rest days and work weeks on one particular assignment; and we shall be guided accordingly in the future.

Accordingly, this case presents for decision the question whether it was proper to allow Mr. Long to return to his regular assignment as soon as he was no longer needed on the vacation relief assignment. We think it was, because he wanted to. In any event, it would not be proper to sustain any claim for money for November 22 and 23, because, under the Brotherhood's theory, he has already been allowed to earn and collect too much.

The Carrier respectfully requests that all claims in this docket be denied.

All known relevant argumentative facts and documentary evidence are included herein. All data in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute. (Exhibits not reproduced.)

OPINION OF BOARD: On Saturday November 17, 1956, Assistant Chief Clerk T-2255 B. O. Alsobrook at Fort Worth, Texas began his annual vacation. His position's assigned work week was Saturday through Wednesday, and his assigned rest days were Thursday and Friday; there was a regular relief assignment, which, on Thursdays and Fridays, was assigned to cover the same work.

Claimant, E. P. Long, then holding a position of East Wheel Clerk T-249, was called and assigned to Mr. B. O. Alsobrook's position, T-2255, as his relief. Long's assignment as East Wheel Clerk, had assigned hours 4:00 P. M. to 12:00 midnight; daily Monday through Friday, with Saturday and Sunday as rest days. He worked his regular assignment during the week of Monday, November 12, 1956 through Friday November 16, 1956, and continued then on Assistant Chief Clerk's position beginning Saturday November 17, 1956 and ending Wednesday, November 21, 1956. Mr. Long returned to his own assignment on November 22 and worked the two days thereof on November 22 and November 23, 1956, the latter being Thanksgiving Day, a holiday.

This claim was filed and has been processed by Organization for payment to claimant Long the difference between pro rata rate and punitive rate of pay of position of Assistant Chief Clerk and it has been considered as a claim for punitive rate of pay for Saturday and Sunday November 17 and 18, 1956, his regularly assigned rest days and for Thursday and Friday, November 22 and 23, 1956, the rest days of the Assistant Chief Clerk's position T-2255.

It is the claim of Organization that Carrier violated Rule 26½, Work Week and Rule 30 of the Agreement in that Mr. Long was not allowed to observe his rest days which he had earned during the preceding five days which he had worked at his own position.

Carrier contends that the claim should be denied by reason of the exception contained in Rules 30(b) and (c). Those rules with Rule 30(a) provide for payment at the rate of time and one-half for "work in excess of 40 straight time hours in any work week" and for work on the sixth and seventh days of their work week, except where such work is performed by an employee due to moving from one assignment to another". Carrier argues that Claimant moved from one assignment to another within the meaning of that exception, and that in doing so, he took all the conditions of that assignment, including rest days thereof.

Rule 26½(a) of the Agreement establishes a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven. Rule 26½ contains a note at its beginning as follows: "The expressions 'position' and work used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees". The term "work week" for regularly assigned employees is defined in Rule 26½(i) to "mean a week beginning on the first day on which the assignment is bulletined to work".

The filling of this vacation assignment was not a displacement of the occupant of the position by a successful bid; the assignment of claimant Long was not due to his absolute seniority compelling his assignment to the higher position on penalty for not so doing: in fact Carrier, in its submission, has admitted there were other persons on the seniority roster, senior to Claimant. Article 12(b) of the Vacation Agreement removes the vacation absence from the mandatory operations of strict seniority rules: "regular relief employee may be utilized regardless of seniority, and, if such employee is not utilized, effort will be made to observe seniority".

Claimant Long filled the vacation assignment after he had earned the rest days of his regular position by working as East Wheel Clerk T-249 the five days of that work week. That stems from Rule 26½(a) where the parties established a work week of five days of work, of eight hours each "with two consecutive days off in each seven". The rest days which followed the five days of work of eight hours each were an "integral part" of the work week of the East Wheel Clerk T-249 position Award 6561. Claimant Long could not carry the rest days with him when he filled the vacation absence. They remained as earned rest days of his regular position. He did not move to relieve the Assistant Chief Clerk until after his rest days were earned. When he relieved the vacationing Assistant Chief Clerk on those earned rest days, the appropriate provisions of the service on rest days became applicable to those days which were November 17 and November 18. We find nothing in the Agreement to suggest that, under the circumstances of this claim, the parties intended, by the exception to the overtime provi-

sions contained in Rules 30(b) and (c), to repeal the principles which they established by Rules 26½(a) and 30(e). There is no basis in the record for any assumption that claimant Long relinquished the earned rest days of the work week of his regular position. Awards 6973-9487.

Claims for November 22 and 23, 1956 are not supported by the Agreement rules and are 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 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 violated.

AWARD

Claim sustained for difference between pro rata pay and the punitive rate of pay for services performed by claimant on his assigned rest days, November 17 and November 18, 1956: denied in all other respects.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1962.