

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**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when on Saturdays, September 29 through November 10, 1956, it compensated Claimant P. H. Browning at pro rata rate for work on his rest days; and when on Mondays, September 24 through November 12, 1956, it did not permit him to work the work days of his assigned position.

(b) The Carrier shall now compensate Claimant Browning for the difference between pro rata rate and time and one-half for all Saturdays, September 29 through November 10, 1956, plus one day at pro rata rate for each Monday, September 24 through November 12, 1956, not allowed to work his assignment on a work day thereof.

EMPLOYEES' STATEMENT OF FACTS: 1. On September 14, 1956, Mr. H. L. Pharr, regularly assigned to the position of Chief Claim Clerk in Carrier's Atlanta, Georgia, Freight Agency, addressed a letter to Carrier's Atlanta Agent, Mr. M. W. Taylor, requesting a leave of absence for ninety (90) days "due to my physical condition," the leave of absence to begin September 24, 1956. (Employees' Exhibit "A"). The work week of Mr. Pharr's position of Chief Claim Clerk began on Monday, Saturday and Sunday being rest days. The hours of assignment were 8:00 A.M. to 5:00 P.M., the assigned meal period being from 12:00 noon to 1:00 P.M.

2. To fill the vacancy occasioned by Mr. Pharr's absence, Carrier promoted Clerk G. T. Walsh, regularly assigned to the position of Claim-Inspection Clerk, to the position. Clerk Walsh took all the conditions of the Chief Claim Clerk position and was paid the Chief Claim Clerk rate (94¢ per day above his regularly assigned position of Claim-Inspection Clerk). The work week of Mr. Walsh's position began on Monday, Saturday and Sunday being rest days. The meal period of the position was from 12:00 noon to 1:00 P.M. A copy of Vacancy Bulletin advertising the position of Claim-Inspection Clerk regularly assigned to Clerk Walsh is attached hereto and identified as Employees' Exhibit "B".

placements shall in no way affect the company's rights under Rule 8 (a), (1), (2), (3), and (6) and Rule 17.

Although carrier has shown that the claim inspector position was not filled four days a week (Tuesday, Wednesday, Thursday, and Friday) by Mr. Browning and one day a week (Monday) by another clerk during the period of the temporary vacancy, it certainly would not have constituted a violation of the Clerks' Agreement or have formed any basis for a claim in behalf of Mr. Browning if the officer in charge had rearranged the force on that basis. When there is a difference in rest days, the agreement does not prohibit the filling of a temporary vacancy by the use of other employes on their assigned work days without disturbing the rest days of their regular assignments. To illustrate, in the case covered by Third Division Award 6819 (Clerks-Southern), the vacancy was filled three days a week by one clerk and two days a week by another, because of the difference in rest days. The Board denied the claim in that case.

Certainly, where the agreement specifies that temporary vacancies up to ninety days may be blanked or filled for all or any part of such period, and that the regular force may be rearranged to avoid filling positions, it does not violate the agreement to rearrange the force without disturbing the work week and rest days of the employes used. If Mr. Browning had been used to fill either the chief claim clerk position or the claim inspector position five days per week; i.e., actually placed on the position for the period of the vacancy, he would have assumed the Saturday-Sunday rest days of the position. But he did not fill the claim inspector position five days a week, and he did not assume the conditions of that assignment.

The evidence discloses that Mr. Browning's rest days continued to be Sunday and Monday, not Saturday and Sunday as alleged by the statement of claim. He was properly compensated at the straight time rate for work performed by him on his assigned days, Tuesday through Saturday, and at the time and one-half rate for working on two of his rest days, Monday, October 15, and Monday, October 29, 1956.

Carrier respectfully requests that the claim be denied for the reasons set forth herein.

All evidence submitted in this case is known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In September 1956 the Atlanta Freight Office Claim Department contained the following employes:

Name	Seniority	Position	Rate	Work Days	Rest Days
H. L. Pharr	7- 7-18	Chief Claim Clerk	\$17.10	Mon.-Fri.	Sat.-Sun.
G. T. Walsh	1-23-46	Claim Inspector	16.16	Mon.-Fri.	Sat.-Sun.
P. H. Browning	9-14-46	Utility Clerk	16.16	Tues.-Sat.	Sun.-Mon.
G. T. Nicholson	1-27-49	Claim Clerk	16.16	Mon.-Fri.	Sat.-Sun.
A. C. Burnett	9-21-48	Claim Clerk	15.46	Mon.-Fri.	Sat.-Sun.

Effective September 24, 1956 Chief Claim Clerk Pharr was granted a 90-day leave of absence. Claim Inspector Walsh, according to the Carrier, was "allowed the higher rate of the chief claim clerk position." (Petitioner characterizes this as a "promotion" to "fill the vacancy" occasioned by Pharr's absence.)

Walsh's Claim Inspector position, according to the Carrier, was not filled. Instead, Management "rearranged the regular force without disturbing or affecting the assigned work weeks and rest days of Messrs. Walsh, Browning, Nicholson and Burnett." Browning, the Carrier affirms, continued to perform Utility Clerk work, including the bulletined duties "Assist with work in Claim and Trace Departments and fill various other positions under the jurisdiction of this Agency when vacant." (The Petitioner, however, states that Browning was assigned to (1) "fill" the "vacancy occasioned by Walsh's promotion" on Tuesdays through Fridays, (2) work in his own regular Utility Clerk position on Saturdays. Claim Clerk Burnett, the BRC says, filled Walsh's position on Mondays.) From a payroll viewpoint, Browning (1) was paid at the rate of \$16.16 a day, (2) received pro rata rate for work performed Tuesdays through Saturdays, (3) received time and one-half rate for work performed on Sundays or Mondays (he actually received overtime pay for Monday, October 15, and Monday, October 29).

On November 16 Walsh was displaced by J. W. Yarbrough and reverted to his regular Claim Inspector status, thus terminating the period of alleged contract violation.

The Petitioner argues, in substance, as follows:

1. Claimant Browning was temporarily assigned to Walsh's Inspector position. He therefore assumed all the conditions of that position, including Saturday-Sunday rest days and Monday-Friday work days.

2. Since Browning was denied the right to Work Mondays and compelled to work Saturdays, he should be compensated at overtime rates for each Saturday worked and at pro rata rate for each Monday that work was withheld.

The Carrier, in defending its actions, maintains:

1. Rules 8(a)(2) and 17 gave Management the right to leave Walsh's position vacant while he relieved Pharr, and to rearrange forces in the manner accomplished here.

Rule 8, entitled "Extra Clerical Work," provides in relevant part:

"(a) Except as provided in Rules 7 and 17, preference for extra clerical work on the respective seniority districts will be given to the available senior qualified furloughed clerical employe in such districts, subject to the following:

"(2) It is not intended to prevent rearrangement of forces to avoid the filling of positions, but in such rearrangement the provisions of Rule 46, section (a) shall be observed."

Rule 17, entitled "Temporary Vacancies" states:

"Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such positions be filled it may be done at the discretion of the officer in charge."

2. Claimant Browning, during the September-November period, fulfilled

only Utility Clerk functions. Thus, on at least ten specified days he separated and delivered pay checks of Mechanical Department employees, expensed freight, set up and listed shop employees' pay checks and delivered pay checks to shop employees. At other times he "assisted with work in the claim department" which is one of his regular "Utility Clerk" responsibilities.

3. Even if Management had filled the Claim Inspector position four days a week with Browning and one day with Burnett (which it denies), there would have been no contract violation. (Award 6819, the Carrier asserts, sustains Management's right to fill a vacancy with two persons, one assigned for three, the other two days, because of the difference in rest days.)

The basic question in this case is whether the Carrier assigned Browning to a vacant Claim Inspector position (as Petitioner claims), or whether he continued to work in his regular Utility Clerk job (as Carrier asserts). If Petitioner is correct, then there is no doubt that Browning should have assumed the rest days of Claim Inspector position and been paid accordingly (see Awards 6561, 4592, 6976).

Under Rule 17 the Carrier was not obligated to fill the Claim Inspector position and was permitted to blank that position for "all or any part of the period . . ." What, then, is the evidence that Carrier actually filled the vacancy?

Petitioner asserts that Browning worked as a Claims Inspector from Tuesdays through Fridays (and as a Utility Clerk on Saturdays). Carrier denies this, stating that Browning merely assisted in the Claims Department. The record, unfortunately, does not contain sufficient information to resolve this disagreement.

Bulletined duties of Utility Clerk include "assist with work in Claim and Trace Department." While Petitioner argues that "assist" means to help or aid someone, the quoted phrase does not necessarily carry that connotation. Work may be present even though particular individuals are not. (The bulletined duty "Fill various other positions . . . when vacant" cannot be applied in our judgment, without reference to other contractual clauses which determine what rates and other employment conditions are proper when vacancies are filled.

Petitioner offers no facts with respect to the actual tasks performed by Browning. It merely asserts that he worked Walsh's position each Tuesday through Friday by moving to Walsh's desk. Yet there is evidence that on at least one Tuesday, one Thursday and two Fridays (in addition to two Mondays) he performed Utility Clerk functions which are not found among the bulletined preponderating duties of Claim Inspector. (Moreover, Carrier indicates these are "examples" only and not meant to be a complete catalogue of Browning's work.)

Undoubtedly there is some line which separates "assist with work in Claim and Trace Department" from filling a Claim Inspector position. In the case at hand, however, we do not have sufficient information to determine whether Browning passed over that line. Under the circumstances, the claim must be 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 evidence fails to establish that the Agreement was 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 August, 1962.