

Award No. 10983

Docket No. CL-10150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement at Pine Bluff, Arkansas, when it failed to compensate Mr. W. R. Doherty at the time and one-half rate for service rendered on one of his assigned rest days.

(2) That Mr. W. R. Doherty be paid the difference between the eight hours at pro rata rate he was paid and the time and one-half rate he was entitled to while working the Route Clerk position, 9:30 A. M., to 6:30 P. M., June 22, 1956.

EMPLOYES' STATEMENT OF FACTS: Mr. W. R. Doherty, whose Group 1 seniority dates from October 11, 1942, is regularly assigned to a Relief Clerk position, Pine Bluff, Arkansas, with the following assignment:

Sunday and Monday	— Typist A	8:30 A. M., to 5:30 P. M.
Tuesday and Wednesday	— Check Clerk	1:00 P. M., to 9:30 P. M.
Thursday	— Check Clerk	12:30 P. M., to 9:30 P. M.
Friday and Saturday	— Rest Days	

On Thursday and Friday, June 21 and 22, 1956, Mr. Doherty was used for filling a temporary vacancy on the Route Clerk position, 9:30 A. M., to 6:30 P. M., rest days Tuesday and Wednesday, Pine Bluff Transfer Shed, in the absence of an available qualified furloughed or extra employee, under the provisions of Rule 11-1(c), account the Route Clerk being off sick. He worked nine hours and twenty minutes Friday, June 22nd, and although he claimed the overtime rate for the nine hours and twenty minutes account working on his assigned rest day, he was paid eight hours at straight time rate and one hour and twenty minutes at the overtime rate.

work claimant on his regular assignment on that day. In other words, if the working conditions of his regular assignment followed claimant then he should have worked his regular assignment on November 23, 24 and on November 30 and December 1, 1950. This, we think, was neither the intent nor purpose of the rules as written."

In handling the claim on the property the Employees cited Awards 5873 and 6382 in support of the claim. Those awards were based on different rules and circumstances and do not support the claim. Award 5873 related to a clerk who was observing a rest day being used for that day only to relieve another employee. The rule provided that service on rest days would be paid under call rule, "unless relieving an employee assigned to such day in which case they will be paid for eight (8) hours at the rate of the position occupied or their regular rate, whichever is higher * * *." There was no dispute that the employee was called on his rest day to relieve another employee. The issue was what constituted the rate of "the position occupied or their regular rate" under the rule involved. Clearly that is not the matter involved here.

Award 6382 (Referee Kelliher) related to a regularly assigned employee who had worked five days being placed on another position on his rest day. There was a dispute as to which rule applied in filling short vacancies. The rule which the opinion held applicable was not quoted in the printed award. Consequently the facts on which the award is based are not apparent from the award. The opinion expressed regarding rules relating to the 40-Hour Week appear contrary to the rules and the later awards cited above. The circumstances involved obviously were quite different from those in the present case.

In conclusion the Carrier respectfully submits that the facts show plainly that there is no basis for the claim, and requests that the claim be denied.

All data herein has been presented to representatives of the Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization here contends that the named Employee W. R. Doherty, should be allowed pay at the time and one-half rate, for one day, when he performed service for Carrier on one of his rest days. He held an assignment as Relief Clerk at Pine Bluff, Arkansas. Such Employee has a Group 1 seniority date of October 11, 1942, with a 5 days work week and rest days Friday and Saturday. Carrier required the Employee to perform service, on an assignment of Route Clerk, on Thursday and Friday, June 21 and 22, 1956. That on Friday June 22nd he performed service as Route Clerk for 9 hours 20 minutes, for which he was allowed pay for 8 hours at the regular rate, and time and one-half, overtime rate for 1 hour 20 minutes. The rest days of the Route Clerk assignment are shown to be Tuesday and Wednesday.

Carrier contends it has in no way violated the provisions of the Agreement. That the Claimant here moved from his regular assignment as Relief Clerk, where he had worked four days of such assignment, when he was assigned to the position of Route Clerk, which position he filled on April 21 and April 22, 1956. April 22, 1956, was one of the assigned rest

days of his Relief Clerk Position. That the Employee was properly paid for service on April 22, 1956, for the reason that the said Employee on claim date, was not entitled to pay as claimed, at the time and one-half rate, except for 1 hour 20 minutes.

The Division has held in numerous cases that rest days attach to a specific assigned position, not to the Employee. In the cause here the Employee did not perform five consecutive days in his assignment, but did perform days service, and on the fifth and sixth days of his assigned workweek he was performing service as Route Clerk. The Route Clerk position to which the Employee moved has assigned rest days of Tuesday and Wednesday. When he moved to this position he assumed the rest days of the position as assigned by Carrier. He was not entitled to the rest days of his regular position, as he had not worked in his own assignment for five days in the workweek specified in such assignment. See Awards 6073, 6971 and 6561.

The record here does not support a sustaining award .

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 Carrier did not violate the provisions of the Agreement as contended.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1962.