

Award No. 11452
Docket No. CL-11076

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(a) Carrier violated the clerical Agreement at Cedar Rapids, Iowa, when on May 17, 1958, they used a cutoff Switchman by the name of Dan Molumby as Day Yard Checker, and on May 18 and 19, 1958, as Weighmaster Bill Clerk.

(b) The Carrier now be required to pay George Hanson, Day Yard Checker, eight (8) hours at the rate of time and one-half for May 17, 1958, and Charles Rompot, Weighmaster Bill Clerk, be paid eight (8) hours at the rate of time and one-half for each day, May 18 and 19, 1958.

EMPLOYEES' STATEMENT OF FACTS: The regular assigned Relief Clerk assigned to relieve the Day Yard Checker at Cedar Rapids, Iowa, on May 17, 1958, and the Weighmaster Bill Clerk on May 18 and 19, 1958, was unable to work and the Carrier, instead of working the regular assigned Day Yard Checker and Weighmaster Bill Clerk, contacted a cutoff Switchman and worked him on the three days in question. The cutoff Switchman by the name of Dan Molumby was attending school and would only perform work when he desired and was not a bona fide clerical employee of the Carrier.

A regular Rule 13 Extra Board is maintained at the Cedar Rapids Yard and on the three above dates the assigned Rule 13 Extra Board Clerk was working on another assignment and there were no unassigned clerks available.

May 28, 1958, Division Chairman filed claims on behalf of George Hanson and Charles Rompot with Mr. F. E. Wheeler, Assistant General Yardmaster, Cedar Rapids, Iowa, these claims being dated the dates of the violations, as follows:

"May 17, 1958 Index 1864 — Yard Office

Location — Cedar Rapids, Iowa

"Name: Geo. Hanson - Day Yard Checker - \$409.26 rate -
Regular Assigned hours - 7:30 A.M. to 3:30 P.M.

AGREED:

/s/ W. E. Petersen
General Chairman"

Switchman D. J. Molumby, cut off in force reduction as such, was employed May 3, 1958, as an extra board clerk and on May 17, 18 and 19, 1958 was used to work the rest days of the claimants as indicated, which he was permitted to do under above agreement, and particularly the last full paragraph thereof, for he was "an employe holding seniority in another craft and who is cut off. . . ."

Mr. Molumby was assigned to the clerks' extra board from May 3, 1958 to June 8, 1958, when he relinquished his extra board seniority to return to switchman ranks. Therefore, during above mentioned period and on dates of claim, he was not only a "bona-fide" employe, but also "an employe holding, etc."

The employes admit that Mr. Molumby was used because no other extra board or furloughed clerk was available.

It is the position of the Carrier that Mr. Molumby was properly used in accordance with above unambiguous language on the rest days of claimants involved and claim has no merit and should be denied.

It is noted the employes are claiming a call of 8 hours time at penalty rate in this docket. Without relinquishing our position as above, we submit that in line with awards of this and other divisions of the National Railroad Adjustment Board, in event there is found a violation of the agreement, pro-rata rate only is proper.

The claim is without merit and we respectfully request your Board to deny the claim of the employes.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: The essential facts are that a furloughed switchman was used in relief of two regularly assigned clerical employes (claimants) on their rest days, under the provisions of a special agreement which is quoted, in pertinent part, as follows:

"With reference to the employment of relief employes, it is agreed that if no extra board clerks or furloughed clerks are available, a bona fide relief employe may be employed. For the purpose of this agreement, a bona fide employe is a person who in good faith has entered the employment of this company and holds himself ready and available to respond to call to fill any vacancy which he or she is qualified to fill at any time on the seniority district where employed. However, the Carrier may at its discretion use a regular employe on overtime basis to protect any vacancy in preference to using such employe.

An employe holding seniority in another craft and who is cut off and unable to hold a position in his craft may be employed for relief work under the clerks' agreement. Should such an employe es-

establish seniority as a clerk and later be called back to his former craft for permanent or temporary work, he will forfeit all rights under the clerks' agreement."

Petitioner's case is bottomed on the premise that the furloughed switchman used for relief purposes here was not a "bona fide employe" within the context of the language of the first paragraph quoted above because, it alleges, he was not "ready and available to respond to call . . . at any time. . . ."

Respondent insists that the second quoted paragraph of the special agreement applies exclusively; that the first paragraph relates to the hiring, not use, of employes for relief purposes; that no furloughed employe could hold himself out as ready and available at any time to respond to a call to fill relief vacancies so long as he was subject to recall to his own craft or class.

The Board has held that it is a violation of the Clerks' Agreement to use an employe of another craft to relieve a clerk on his rest day. (Award 2706, citing Award 2052.) And we have also found violations where new employes (4037), "outsiders" (3868), and itinerants and transients were used for relief purposes on the regular jobs of covered employes. (4495, 5620 and 10990.)

Some of the foregoing findings are reflected in the first quoted paragraph of the special agreement controlling here. The language there is designed to protect employes covered by the Clerks' Agreement from the consequences of hiring for relief purposes employes of the type described in the cited Awards.

The second quoted paragraph, however, constitutes an exception to the general rule laid down in Award 2706. It grants the Carrier the right to use a furloughed employe of another craft for relief work under the Clerks' Agreement. The switchman in this case was an employe of the Carrier on furlough from his own craft. He was not a new employe, or a transient or itinerant worker employed on a day-to-day basis. Under the applicable paragraph of the special agreement there is no requirement that he be available at all times to fill relief vacancies. As a matter of fact, such a requirement, if present, would be meaningless so long as the furloughed man was subject to recall to his own craft or class of employment. Under the controlling rule here it was proper for the Carrier to use the furloughed switchman for relief purposes on claim dates.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schuly
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.