Award No. 11528
Docket No. CL-11233

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1. The Carrier violated the Clerks' Rules Agreement at Savanna, Illinois when it worked an employe on an assigned position in excess of 5 days or 40 hours and failed to compensate him at the overtime rate of pay for work performed on one of his rest days. A further violation resulted when the Carrier failed to call the senior available furloughed employe who did not have 40 hours of work that week.

2. The Carrier shall now be required to compensate Employe K. Arneson for an additional 4 hours at the pro rata rate of Checker Position #56 for August 6, 1958.

3. The Carrier shall now be required to compensate Employe R. D. Keehner for 8 hours at the pro rata rate of Checker Position #56 for August 6, 1958.

EMPLOYES' STATEMENT OF FACTS: Yard Clerk Position #56 is a regularly assigned position with hours of assignment of 11:45 p.m. to 7:45 a.m., 7 days per week.

Employe H. Dunham is the regular occupant of Position #56 and is assigned Friday through Tuesday with rest days of Wednesday and Thursday. Wednesday, the first rest day of Position #56, is a tag-end or unassigned day. Thursday, the second rest day, is included within regular Relief Position #18.

Employe I. Shrake is the regularly assigned occupant of Relief Position #18 which provides rest day relief as follows:

Position No. 59	Sunday and Monday
Position No. 60	Tuesday and Wednesday
Position No. 56	Thursday

for the service beginning at 11:45 p.m. on August 6, 1958 and, therefore, was properly recalled from the furloughed list to perform that service, there is absolutely no basis for the claim in behalf of Employe Keehner who, as stated, was a junior furloughed employe.

There is no basis for this claim. There has been no violation of the rules. The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: R. Dunham was regularly assigned to Position #56 as Yard Clerk. His assigned hours were 11:45 P. M. to 7:45 A. M. Friday through Tuesday, with rest days of Wednesday and Thursday. Wednesday, the first rest day, is a tag-end or unassigned day. Thursday, the second rest day, is included within regular Relief Position #18. Employe I. Shrake was the regularly assigned occupant of Relief Position #18.

R. Dunham started his one week vacation on Friday, August 1, 1958. Claimant, K. Arneson, who was the senior furloughed employe, was recalled in accordance with Rule 12 (d) and assigned to fill the vacation vacancy. Arneson worked Friday, August 1 through Tuesday, August 5. Wednesday, August 6 was a tag-end or unassigned day. Carrier directed and Arneson did work on that day. It was his sixth consecutive day of work on Position #56. He was paid at the straight time rate for that day.

Claimant, Arneson asks for four additional hours of pay at the straight rate for work on Wednesday, August 6, 1958, his sixth day of work on Position #56. A claim was also filed in behalf of R. D. Keehner, the senior furloughed employe who was available to work Position #56 on August 6, and who had less than 40 hours of work that week.

Carrier contends that the overtime rule does not apply to Claimant, Arneson because his assignment to Position #56 terminated on Tuesday, August 5 and he was assigned to work on August 6 from the furloughed list. Carrier also contends that Arneson meets the exception in Rule 32 (c) and (d). This Rule provides:

> "(c) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27.
>
> "(d) Employes worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27."

Carrier emphasizes that part of Rule 32 (c) and (d) which reads:

". . . except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list . . ."

We do not agree with Carrier's position.

Claimant, Arneson was properly assigned to fill the vacancy in Position #56. He worked the five regularly assigned work days. Wednesday, August 6, 1958 was his sixth consecutive day and he was assigned to and did work on that day. He was entitled to be paid for work on that day at time and one-half the basic straight time rate. His assignment does not come within the exceptions in Rule 32 (c) and (d).

Rule 27 (h) reads:

"(h) Rest Days of Extra or Furloughed Employes

To the extent or furloughed employes may be utilized under this agreement or practices, their days off need not be consecutive; however, if they take the assignment of a regular employe they will have as their days off the regular days of that assignment."

Claimant, Arneson, took the "assignment of a regular employe." The rest days of the regular employe occupying Position #56 were Wednesday and Thursday. Wednesday, August 6, 1958, was Arneson's regular day off. In Award 6970 (Carter) we said:

"It seems clear . . . that an extra employe who works all five days of the work week of a regular assigned employe is entitled to the two rest days incidental to that work week, and, if he is required to work on the rest days thereof, he is entitled to be paid for the rest day work, namely, the time and one-half rate."

Award 11039 (Boyd) involves the same parties, and the same Rules. We said:

"August 3 and 4 were rest days of Position 111. It is the contention of the Carrier that when furloughed employe Hall finished the last work day (August 2) of the vacation vacancy that he had been filling, his status reverted to that of a furloughed employe and when he moved to Position No. 3 to cover the vacation vacancy he was not entitled to overtime by reason of the exception in 32 (c). The Organization contends that August 3 and 4 were the rest days of Position 111 and Hall did not revert to a furlough status until the expiration of the work week [Rule 27 (h)]. This rule provides that if a furloughed employe takes the assignment of a regular employe they will have as their days off the regular days of that assignment. This rule applies here, and August 3 was one of employe Hall's rest days. Thus when he worked Position 3 on Saturday, August 3, Rule 33 (c) became applicable."

Claimant, Arneson was clearly entitled to pay at time and one-half the basic rate for work on August 6, 1958.

Claimant, Arneson, while filling Position #56 vacation vacancy, was entitled to work on his rest day August 6 because no regular Relief Position was assigned to work that day. This is consistent with the 40 Hour Week

Agreement and with Decision No. 31 of the 40 Hour Week Committee. That decision said, in part:

> "An extra employe cannot claim extra work in excess of 40 hours in his work week if another extra employee who has had less than 40 hours in his work week is available, **except that if filling the assignment of a regular employee he may continue thereon,** subject to any limitation in the individual agreement with respect to retention of assignments by extra employees . . ." (emphasis ours).

Arneson was filling the assignment of a regular employe and was, thus, entitled to "continue thereon" in preference to Claimant Keehner, a furloughed employe who had less than 40 hours of work in his work week.

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 violated the Agreement with respect to the claim of K. Arneson and did not violate the Agreement with respect to the claim of R. D. Keehner.

AWARD

Claim of K. Arneson is sustained.

Claim of R. D. Keehner is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June, 1963.