

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

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

(a) The Carrier violated the Agreement at Camak, Georgia, on June 25, 26, July 2, 3, 9, 10, 16 and 17, 1960, when it paid Extra Porter F. E. Jackson less than eight hours' pay for a day's work; and

(b) Carrier shall now additionally compensate Extra Porter F. E. Jackson for four hours' pay for each day specified in (a) and for all Saturdays and Sundays thereafter worked by claimant until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to June 25, 1960 there were two positions titled "Porter" at Carrier's facility in Camak, Georgia. John Tate was the occupant of Position No. 1, hours of assignment 8:00 A.M. to 5:00 P.M. with a work week Monday-Friday, days of rest Saturday and Sunday. F. E. Jackson was the occupant of Position No. 2, hours of assignment 8:00 A.M. to 5:00 P.M. with a work week Saturday-Wednesday, days of rest Thursday and Friday. No relief was furnished on the rest days of either position, but it should be noted that the rest days of the position were staggered in such a way as to make the operation continuous—a seven day operation. Effective June 25, 1960 Position No. 2 was allegedly discontinued and the occupant of that position, F. E. Jackson, became an "Active Extra Board" employe as there was no junior employe over which he could exercise seniority.

However, since there was work necessary to be performed on Saturday and Sunday (rest days of the remaining porter position) Carrier called and assigned Claimant Jackson to work on Saturday, June 25, 1960, hours 12:00 noon-4:00 P.M. (the day following that on which his position was abolished) and the same hours on the following Saturdays, June 2, 9, 16 and Sundays, June 26, July 3, 10, 17, the days specified in claim filed by the Organization and on Saturdays and Sundays thereafter. Carrier compensated him for four (4) hours at pro rata rate for each day worked.

Washington and your request to discontinue this practice after tour of duty Friday, July 15, 1960.

This is to advise the four (4) hour call, five (5) days a week for porter at Washington was discontinued after the tour of duty July 15, 1960 also, the four (4) hour call worked on Saturday and Sunday at Camak was discontinued after the tour of duty July 17, 1960."

Carrier feels that it was entirely proper to work this man on a call basis as was done on the dates in question, and respectfully requests that the claim be denied.

OPINION OF BOARD: At Camak, Georgia, Carrier abolished one position of Porter, Saturday through Wednesday, leaving another Porter position, Monday through Friday. Claimant, the incumbent of the abolished position, was used by Carrier on the dates claimed as an "extra" porter on an assignment of only four hours, 12:00 Noon until 4:00 P.M., for which he was paid only four hours' pay.

Rule 33 states:

"BASIC DAY

(a) Eight consecutive hours, exclusive of the meal period shall constitute a day's work for which eight hours' pay shall be allowed.

(b) Where service is intermittent eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employees filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, and also for all time in excess of twelve (12) consecutive hours computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the Management and duly accredited representatives of the employees. For such excepted positions the foregoing paragraph shall not apply."

This rule shall be construed as authorizing the working of split tricks where continuous service is required.

Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employee cannot otherwise be utilized.

Employees covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours."

We have frequently held that this and similar rules require that Carrier assign at least 8 hours of work per day unless there is an express rule or separate agreement permitting a shorter work period. The only Rule providing

for a shorter work period is Rule 38 (g) which provides for a minimum of 3 hours pay for two hours of work and time and a half for all time in excess thereof. Carrier does not justify its action under this Rule which does not apply to extra employes such as Claimant.

Carrier proceeded under the mistaken assumption that an agreement with the Organization to permit four hour assignments of extra porters at two other locations would apply at Camak. Although that Agreement was not submitted in evidence, Carrier made no effort to press the point and we must assume the Agreement was limited to the other two locations as stated by the Organization.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1964.