

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

PANHANDLE AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5177) that:

(a) Carrier violated the provisions of the current Agreement at Lubbock, Texas, when it required E. L. Reissig to work March 7, 1960, his regular assigned rest day, and failed and refused to pay him the punitive rate of time and one-half for work performed on this date.

(b) E. L. Reissig shall now be paid an additional four (4) hours at the pro rata rate of Yard Clerk, Position 5704, for March 7, 1960.

EMPLOYES' STATEMENT OF FACTS: Claimant, E. L. Reissig, in the work week beginning March 1, 1960, was the regular assigned occupant of Yard Clerk Position No. 5704 at Lubbock, Texas, with assigned rest days of Sunday and Monday of each week.

Effective Monday, March 7, 1960, the rest day of Position No. 5704 were changed from Sunday and Monday of each week to Saturday and Sunday of each week and, in line with the rules, the position was declared vacant and bulletined in accordance with the provisions of Article VI, Section 6-b of the Agreement. The advertisement bulletin, Bulletin No. 10, dated March 2, 1960, reads in part as follows:

"Written applications received at this office up to and including 12:00 M (Noon), March 9, 1960, will be considered. The oldest competent employee bidding on same will be assigned."

In accordance with the prerogative of management granted in Article VI, Section 6-b, the former incumbent, E. L. Reissig, was instructed by the Agent at Lubbock to protect the position during the bulletin period, including Monday, March 7, 1960, which was prior to the time the bids closed and an assignment could be made. During E. L. Reissig's work week of March 1 through 7, 1960, he was required to and did perform service on six (6) days for a total of forty-eight (48) hours all of which was paid at the straight time rate. During the period here involved Claimant worked as follows:

to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Section 10-g of Article VI.

Section 1-c. Employees 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 employee 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 Section 10-g of Article VI."

* * * * *

"Section 1-f. Service rendered by employees on their assigned rest days shall be paid for under Section 2 of this Article VII, unless relieving an employee assigned to work on such day, in which case they will be paid the same as such assigned employee would be paid, subject to the provisions of Section 3-a of Article XI, unless the employee working such day shall have rendered service on five previous days in his work week, in which event he shall be paid at the rate of time and one-half."

Inasmuch as the change in work weeks effective Monday, March 7, 1960, occurred on the first day of the new work week, it cannot properly be held that the old work week of Position 5704 which commenced on Tuesday, March 1, 1960, extended over into the new work week which commenced on Monday, March 7, or that Mr. Reissig worked in excess of 40 hours or five days in a work week or rendered service on one of the rest days of the position to which he was assigned. March 7, 1960, the date involved in this claim became one of the regular work days of Position 5704 effective that same date, and Mr. Reissig assumed the work week, assigned rest days, etc., of Position 5704 both before and after the change in work weeks. There was therefore no violation of the above quoted Sections 1-b, 1-c or 1-f and those rules lend no support to the Employees' position in the instant dispute.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant case is wholly without merit or support under the Clerks' Agreement and should be denied in its entirety.

OPINION OF BOARD: E. L. Reissig, a Yard Clerk, worked a Tuesday through Saturday workweek with assigned rest days of Sunday and Monday. During the week commencing Tuesday, March 1, 1960 the Carrier changed the assignment on which he worked to one with rest days of Saturday and Sunday, effective Monday, March 7, 1960. Reissig, the Claimant, applied for the new position in accordance with Bulletin No. 10, dated March 2, 1960 which permitted bids until Noon on Wednesday, March 9, 1960. He was instructed to protect the position during the bulletin period, including Monday, March 7, 1960. The Claimant worked Tuesday, March 1 through Saturday, March 5 and Monday, March 7 through Friday, March 11, 1960. The Organization filed a claim for an additional payment of four hours at his pro rata rate for work performed on Monday, March 7, 1960.

The Organization contends that Monday, March 7th was the seventh day of the workweek he commenced on March 1, 1960, and that under Article VI he is therefore entitled to payment at the time and one-half rate because it was his rest day. It contends that the new job assignment did not become

Claimant's assigned position until bids closed at Noon on March 9th, and that accordingly he was working on Monday March 7 not as a new assignee on the new position but as a carry-over, required by the Carrier to protect the assignment during the bulletin period.

The Carrier contends that work done on the Monday in question constituted the commencement of the new workweek assignment and did not justify additional compensation particularly since Article VI, Section 1-C relieves the Carrier from liability for overtime on the sixth and seventh day of a workweek where the work is performed due to moving from one assignment to another as in this case.

In this case there is no question that the Carrier has the right with proper notice to make an assignment change as a means of changing the workweek. The parties in correspondence had stated that if such an assignment change and the bulletining of it were announced sufficiently in advance for the Claimant to be assigned as the successful applicant for the position on Monday then he would have had the alternative of bidding off the position or commencing work on Monday, March 7, 1960 on the newly established position as the first day of the new workweek at the straight time rate of pay.

In this case the Claimant was working Monday, March 7th not on his own volition or through the exercise of seniority, but under orders to remain on and protect the assignment during the bulletin period. As a result he was entitled to four hours extra compensation on March 7, 1960, inasmuch as bids for the new assignment had not yet been closed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 10th day of February, 1965.