

Award No. 13476

Docket No. CL-13213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-5074**) that:

(1) Carrier violated the rules of the Clerks' Agreement at Bluford, **Illinois**, on July 4, 1960, a legal holiday, when it blanked position No. 466, occupied by Clerk R. A. Green and assigned to other clerical employees duties regularly assigned to and performed by him.

(2) **R. A. Green** shall now be compensated for **one** day's pay at **penalty** rate for July 4, 1960 (pro rata rate of position **\$18.68** per day).

EMPLOYEES' STATEMENT OF FACTS: There are employed at Bluford, Illinois, a force of employees who perform the clerical work incidental to the operation of the station and terminal, subject to the terms of the Clerks' Agreement between the parties.

Employees, positions, hourly assignments, rest days, rates of pay, etc. involved in this **dispute** are as follow:

Pos. No.	Title	Incumbent	Rate	Hours	Work Days
238	Chief Yard Clerk	F. W. Colwell	\$19.40	7 AM-3 PM	Monday-Friday
235	Perishable Clerk	W. E. Lewis	19.09	7 AM-3 PM	Thursday-Monday
466	Outbound Bill Clerk	E. D. Wiley	18.68	7 AM-3 PM	Wednesday-Sunday

Rest Day Relief Clerk R. A. Green relieves
236 Yard Checker, **Sunday** and Monday
466 Outbound **Bill** Clerk, Monday and Tuesday
246 Yard Checker, Wednesday

Duties regularly assigned the involved positions are as follows:

Position No. 238, Chief Yard Clerk-Keeps time **roll** for **all employees**; Makes arrangements with all concerned in **connection** with the listing of outbound **trains**; calls all train crews; calls switching crews;

OPINION OF BOARD: The Claimant in this case **is** the regularly assigned occupant of a Rest Day relief position. On Monday, July 4, 1960, one of **7** holidays observed in accordance with the Agreement, the Carrier blanked the **Clerk's** position occupied by the Claimant. It was anticipated that the work load would be light on this holiday, and that whatever work had to be done, could be accomplished by the Chief Yard Clerk and the Perishable Clerk. There were approximately three hours work of Claimant's position to be done if he had worked on the holiday. This was done *by* the Chief Yard Clerk and the **Perishable** Clerk. Claimant observed the holiday and was paid the holiday rate of pay. A claim was filed for an additional days pay at the penalty rate *on* the grounds that Carrier violated the agreement when it would *not* permit Claimant to work the holiday.

Carrier bases its action on Rule 43 (b) of the Agreement which provides that "Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below (5) five per week, excepting that **this** number may be reduced in a week in which holidays occur by the **number** of such holidays."

Carrier contends that the above **rule** is controlling, and that in accordance with its provisions, it could dispense with Claimant's services on the day in question.

Petitioner alleges that Rule 37 (f) gives him a preferential right to be paid for work required **on his** position on an unassigned day. This rule reads as follows:

"(f) Work on Unassigned Days—

"Where work is required by the Carrier to be performed on a day which is not **a** part of any assignment, it **may** be performed by **an** available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in **all** other cases by the regular employee."

Petitioner further contends that for all intents and purposes Rule 37 (f) is identical with **Section 3 (i)** of Article II of the Chicago Agreement of March **19, 1949**. "**Holiday** work" is considered here as work on unassigned days. When a holiday **falls** on a day assigned to a rest day relief employee, such work belongs to the **rest** day relief employee, that is the Rest Day **relief** employee is to be considered as the regular employee **as** that term **is** used in the 40 hour week agreement from whence came **Rule 37 (f)**. Petitioner further bolsters his **argument** by quoting the following from **instructions issued** by Carrier.

"4. Work on a holiday shall be performed—

- B. **If** on a regular **relief assignment**, by
 (1) The regular incumbent."

The Carrier contends that these instructions simply represent its understanding of the proper methods of filling temporary vacancies and in no way **constitutes** an agreement with the employees **as** to the filling of these **vacancies**, further; that these instructions do not prohibit the Carrier **from** blanking a position on a holiday.

A review of the record in this case **and** a consideration of the arguments **propounded** by both sides, convinces **us** that in order for **Claimant** to be **suc-**

cessful, he would have been required to demonstrate an exclusive right to the work performed. The evidence indicates otherwise. These duties are performed by all three position⁶ interchangeably. We agree with **the** Carrier that Rule **43** is controlling in **this** case and that as such Carrier wa⁶ within it⁶ **rights** **when** it reduced the **labor** force on the day in question. The reliance by the Claimant on Rule 37 (f) and the letter of instructions **quoted** infra, is at best tenuous and we accordingly reject it. We **rely** essentially on Award 22, Special Board of Adjustment No. **170**, involving the same parties and having the same force and effect as an award of the National Railroad Adjustment Board. We will deny the Claim.

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 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 Agreement was not **violated**.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: **S. H. Schulty**
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1966.