



Award No. 17223

Docket No. CL-17703

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James Robert Jones, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6444) that:

- (1) The Carrier violated the Clerks' Agreement when on Wednesday, April 26, 1967, it refused to compensate Mail Handler, Roy E. Weatherman, in accordance with guarantee provisions of Memorandum Agreement effective February 20, 1967.
- (2) Mail Handler, Roy E. Weatherman, be compensated for eight (8) hours at pro rata rate of Mail Handler for Wednesday, April 26, 1967.

EMPLOYEES' STATEMENT OF FACTS: On January 31, 1967, a Memorandum Agreement, (Employees' Exhibit No. 1) was signed to become effective on February 20, 1967 commonly referred to as a "Guaranteed Call Board" Agreement.

Claimant Weatherman who had previously held a regular assignment was required to displace on the Call Board on Wednesday, April 26, 1967, on which date he did not work as a result of not being called. On Thursday, Friday, Saturday and Sunday he was called and worked. He was paid for the four (4) days worked only instead of the guarantee of the equivalent of 5-8 hour days as the employees allege the agreement provides.

Claim was duly filed by Local Chairman, Mr. L. R. Gant, on behalf of Mr. Weatherman with Mail and Baggage Agent V. F. Juel in a letter dated May 18, 1967, (Employees' Exhibit No. 2). Mr. Juel in letter dated May 25, 1967, denied the claim (Employees' Exhibit No. 3).

General Chairman L. D. Graham appealed the case on July 21, 1967 to Manager of Personnel, Mr. U. B. Llewellyn, the highest officer of the Carrier to whom appeals can be made (Employees' Exhibit No. 4).

Manager of Personnel, Mr. U. B. Llewellyn, denied the appeal on September 1, 1967, (Employees' Exhibit No. 5) at the same time agreeing to meet with the employees in conference at a future date.

Conference was held on the claim on December 12, 1967 with Mr. Llewellyn reaffirming his denial of September 1, 1967.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Mr. Roy E. Weatherman held a regularly assigned tour two Mail Handler position with Monday and Tuesday as rest days. On Wednesday, April 26, 1967, Mr. Weatherman was notified that he had been "bumped" from his position and Weatherman immediately exercised his seniority by bumping to the tour 2 Call Board effective April 26, 1967. Claimant was placed on the Call Board in seniority order as provided by the guaranteed extra list agreement dated January 31, 1967. Due to six extra men being ahead of him, he was not called for service on Wednesday, April 26, 1967. Mr. Weatherman was called and worked on April 27, 28, 29 and 30, 1967.

OPINION OF BOARD: Claimant Weatherman had held a regular assignment on Monday and Tuesday, April 24-25, 1967. On Wednesday, April 26, 1967, Claimant was required to displace on the Call Board.

Claimant was not called on Wednesday, April 26, due to six extra men being ahead of him in seniority. Claimant worked the remaining four days of that week and was paid for four days.

Claimant contends he should be paid for five days based on the Guaranteed Call Board Agreement effective February 20, 1967.

Claimant and Carrier agree that the applicable part of this Agreement is Section 1, paragraph (f) 2(A) and 2(B). The exact language follows:

"2. (A) Extra board employees, shall be guaranteed the equivalent of 5, 8 hour days per week at the guaranteed rate, except that this guarantee shall be reduced by one day in any week for any day on which an employee does not work by reason of failure to respond, during established calling hours, to a call for work on that day."

(B) In computing the guarantee, time worked will be paid for at the rate of the position or positions on which worked and when compensation paid (including daily overtime in any work week is less than the weekly guarantee an additional amount will be paid so that the total amount paid will equal five (5) times the guaranteed rate."

This entire dispute rests on the interpretation of the above quoted language. Carrier states that a work week for unassigned employees is a period of seven consecutive days starting with Monday. Carrier further contends that by virtue of not being on the Call Board on Monday and Tuesday, Claimant was not available and did not respond for a call on those days and therefore those two days should be subtracted from the five day guarantee leaving Claimant with a guarantee of three days. Since Claimant was paid for four days, he would have no standing on this claim.

We feel Carrier is reading something into this Rule which is not there. With regard to the reduction of the five day guarantee, the Rule states clearly that such a reduction shall come into play only when an employee does not work "by reason of failure to respond, during established calling hours, to a call for work on that day." We cannot find any other language that provides for reducing the five-day guarantee for any other reason.

In this case, Carrier admits in its reason for declining the claim that Claimant was on the Call Board for five days. The fact that Claimant

was not called on Wednesday was no fault of his own. Claimant's failure to work on Wednesday was not because he failed to respond to call for work on that day. Carrier admits that it didn't call Claimant because there were six others whose seniority were ahead of him. Such reason for failure to call Claimant should not act as a penalty to the Claimant who was ready and available to work.

This Board believes that we should not read any implied language into an Agreement so long as the written language of the Rule is clear. Furthermore, when there is an expressed exception, as there is in this case, we should not try to read additional implied exceptions. If additional exceptions are desired, the parties themselves should negotiate these and express these in the contract. This Board should not make the contract for the parties. We cannot find in the Rule that a Call Board employee must be on the Call Board a full seven day period in order to qualify for the five day guarantee.

Carrier makes a strong argument in its rebuttal that Claimant was available on Call Board No. 2 only four days in the week of April 24. Carrier says that Claimant Weatherman, upon reporting for work at 6:30 A.M., April 26, 1967, was notified in writing of his displacement from a regular 7:00 A.M. mail handler position. Claimant then gave written notice dated April 26, 1967 that he would displace on Call Board, on Tour No. 2, not Tour No. 3 as stated by Petitioner.

Carrier's Exhibit No. 2, is copy of notice of displacement dated April 26, 1967, given by Claimant Weatherman that he would go to "Call Board No. 2". To be available for call on Board No. 2, an employee must have placed himself thereon prior to 5:00 A.M. Since Claimant Weatherman gave notice subsequent to 5:00 A. M. on April 26, 1967, Carrier contends Claimant did not stand for service on Board No. 2 until 5:00 A.M., April 27, 1967.

Although persuasive, this contention cannot be considered because it is new evidence not considered on the property. Furthermore, Carrier precluded its right to this argument when in the handling on the property it refused the instant claim in the letter signed by V. F. Juel. The letter stated that Claimant was not available for call on Monday and Tuesday, April 24 and 25. By inference in Juel's letter and by expressed acknowledgement in Carrier's ex parte submission, Carrier admits that Claimant was available for call on Wednesday through Sunday, April 26-30. Therefore, Carrier's argument on rebuttal cannot stand.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.