



Award Number 17602

Docket Number CL-18063

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6514) that:

- 1) Carrier violated the Clerks' Rules Agreement at St. Paul, Minnesota when it failed and refused to properly compensate employee Gordon W. Johnson for service rendered on Saturday and Sunday, August 19 and 20, 1967.
- 2) Carrier shall now be required to compensate employee G. W. Johnson an additional four (4) hours at the pro rata rate of Position 1400 for service performed on Saturday and Sunday, August 19 and 20, 1967.

EMPLOYEES' STATEMENT OF FACTS: Employee Gordon Johnson, who has a seniority date of September 28, 1951 in District No. 28 at St. Paul, Minnesota, is regularly assigned to Relief Yard Clerk Position #1, Saturday through Wednesday, with Thursday and Friday rest days.

Chief Yard Clerk Position 1400 at St. Paul (rate of \$25.1143) is assigned Monday through Friday, with Saturday and Sunday rest days. This is a 7-day position and the Saturday and Sunday rest days are included in Relief Position #1.

During the period from August 7th through August 18, 1967, the occupant of Chief Clerk Position was absent on vacation, and employee Johnson requested and was assigned to fill the position during that period in accordance with the provisions of Rule 9(g). See Employees' Exhibit "A". Employee Johnson's relief position was not filled during the period he occupied Position 1400. The rest day relief work normally performed by him was performed on overtime during that period by the regular occupants of the positions' relieved.

Employee Johnson worked the vacation vacancy on Position 1400 from August 7th through 18th, 1967, including the Saturday and Sunday, August 12 and 13, rest days, for which two days he was compensated at the time and one-half rate.

Employee Johnson made no request to return to his regularly assigned Relief Position #1 on the Saturday and Sunday, August 19 or 20, 1967, rest days

Therefore, during the period August 3 through August 23, 1967, claimant Johnson performed service as follows:

Day	Date	Position Worked	Compensation Allowed
Thursday	August 3, 1967	Yard Clerk Position No. 1414	8 hrs. straight time
Friday	August 4, 1967	Yard Clerk Position No. 1414	8 hrs. straight time
Saturday	August 5, 1967	Yard Clerk Position No. 1414	8 hrs. straight time
Sunday	August 6, 1967	Yard Clerk Position No. 1414	8 hrs. straight time
Monday	August 7, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Tuesday	August 8, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Wednesday	August 9, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Thursday	August 10, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Friday	August 11, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Saturday	August 12, 1967	Rest Day	
Sunday	August 13, 1967	Rest Day	
Monday	August 14, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Tuesday	August 15, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Wednesday	August 16, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Thursday	August 17, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Friday	August 18, 1967	Chief Yard Clerk Position No. 1400	8 hrs. straight time
Saturday	August 19, 1967	Relief Position No. 1 (Pos. No. 1400)	8 hrs. straight time
Sunday	August 20, 1967	Relief Position No. 1 (Pos. No. 1400)	8 hrs. straight time
Monday	August 21, 1967	Relief Position No. 1 (Pos. No. 1424)	8 hrs. straight time
Tuesday	August 22, 1967	Relief Position No. 1 (Pos. No. 1424)	8 hrs. straight time
Wednesday	August 23, 1967	Relief Position No. 1 (Pos. No. 1405)	8 hrs. straight time

Rule 32(d) of the currently effective schedule agreement reads as follows:

"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 paragraph (g) of Rule 27." (Emphasis ours)

In accordance with the specific provisions of Rule 32(d) claimant Johnson received the straight time rate for the service he performed on his regularly assigned Relief Position No. 1 on the claim dates of the instant claim, i.e., August 19 and 20, 1967, and properly so, because such work was performed due to his moving from one assignment (Chief Yard Clerk Position No. 1400) to another (Relief Position No. 1), said move from one assignment to another occurring as a result of an exercise of seniority under the provisions of Rules 9(g) and 9(h) on the part of claimant Johnson.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of February 13, 1968.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim arises from Claimant's performing work on Saturday and Sunday, August 19 and 20, 1967. The facts reflect that he was assigned to fill a vacation vacancy (Position 1400) beginning Monday, August 7, 1967. Position 1400 is assigned Monday through Friday, with Saturday and Sunday rest days. Claimant was paid straight time for the first five days and, having worked Saturday and Sunday, August 12 and 13, 1967, was compensated time and one-half. During the week of August 14, Claimant worked seven straight days and was compensated straight time for each of

these days. This claim is made for additional compensation alleging that Claimant should have been paid at a rate of time and one-half for August 19 and 20, 1967.

It is the Carrier's contention that the vacation vacancy filled by Claimant terminated on August 18 and that the work performed by Claimant on Saturday and Sunday, August 19 and 20, was performed by him in his regular position of relief position No. 1.

The present question involved here is the application of Rule 27, the pertinent part of which is as follows:

"Rule 27—40 HOUR WEEK

(a) —General

There is hereby established for all employees a work week of forty (40) hours, consisting of five days of eight (8) hours each, with two consecutive days off in each seven"
(Emphasis ours.)

In a claim involving the parties hereto in Award No. 11528 (Dolnick), quoting from Award No. 6970 (Carter), this Board said:

"It seems clear that an extra employee who works all five days of the work week of a regular assigned employee 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."

And in Award No. 16248 (Friedman), again involving the parties herein, the Board said:

". an employee effective on his rest day who acts to relieve another (not having prior thereto moved to that assignment) must receive time and one-half, according to 33(c). That rule does not distinguish between employees who sought the work and those who did not."

We conclude that Claimant, having performed five days of eight hours each, earned August 19 and 20 as rest days under Position 1400 and was entitled to be paid time and one-half for work performed on those days.

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 11th day of December 1969.