

Award No. 19022

Docket No. CL-19095

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6898) that:

1) Carrier violated the provisions of Memorandum of Agreement No. 2 at Savanna, Illinois when it deducted eight (8) hours sick pay leave allowed an employee on the first half of January 1970 paycheck from his second half of January 1970 paycheck.

2) Carrier shall compensate employee M. Podolski for eight (8) hours sick leave pay at the straight time rate of Train Clerk Position 2503 for Saturday, January 10, 1970.

EMPLOYEES' STATEMENT OF FACTS: Employee M. Podolski is regularly assigned to Relief Position No. 2 at Savanna, Illinois and relieves the following positions:

Train Clerk Pos. 2503 — 11:45 P.M.-7:45 A.M., Saturday & Sunday

Train Clerk Pos. 2511 — 11:45 P.M.-7:45 A.M., Monday

Caller-Msgr Pos. 2514 — 11:45 P.M.-7:45 A.M., Tuesday & Wednesday

Rest Days — Thursday & Friday

Employee J. Everhart is regularly assigned to Relief Position No. 4 at Savanna, and relieves:

Train Clerk Pos. 2502 — 7:45 A.M.-3:45 P.M., Friday & Saturday

Train Clerk Pos. 2509 — 7:45 A.M.-3:45 P.M., Sunday & Monday

* * * * *

(D) Employees with three years or more seniority as a clerk — ten working days."

Claimant Podolski did request, because of his alleged illness, eight hours' pay at the straight time rate applicable to Position 2503 for January 10, 1970, but it was declined (and properly so) on the basis that he had been compensated for his working day on January 10, 1970 and was entitled to nothing additional.

Attached hereto as Carrier's Exhibit "A" is a copy of a letter dated April 24, 1970 written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman of the Clerks' Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Podolski requested assignment to a temporary vacancy in Relief Position No. 4 commencing at 7:45 A.M. on Friday, January 9, 1970. The Claimant's regular assignment was Relief Position No. 2 which involved a 11:45 P.M. to 7:45 A.M. shift. Thursdays and Fridays were 'rest days from his regular assignment.

Pursuant to his request, Claimant was assigned to a temporary vacancy in Relief Position 4 and worked from 7:45 A.M. until 3:45 P.M. on January 9, 1970 and gave up the temporary vacancy to return to his regular Relief Position No. 2.

There was no furloughed employee available to work the temporary vacancy (which Claimant had given up) in Relief Position 4 so Claimant was asked to work again the 7:45 to 3:45 shift on January 10, 1970 and he did.

Later in the day on January 10, 1970 Claimant became ill and could not go to work at 11:45 P.M. (the starting time of his regular shift) because of illness. Claimant wants sick leave pay and Carrier refuses to make such payment alleging that Claimant had already worked at the penalty rate on that date, had been paid for that day and therefore is not entitled to the sick leave.

It appears that Carrier is alleging in effect: (1) that when Claimant started to work on January 9, 1970 a day started at 7:45 A.M. and that the day ended January 10, 1970 at 7:45 A.M.; (2) that another day began at 7:45 A.M. January 10, 1970 and that for working the 7:45 to 3:45 shift on said day, Claimant was given overtime for work done in advance of assigned hours; (3) that because Claimant was paid for the hours 7:45 A.M. to 3:45 P.M. on January 10, 1970, Claimant may not get paid sick leave for missing his 11:45 shift.

Upon analyzing the entire situation, it seems to us that had Claimant gone to work at 11:45 P.M. on January 10, 1970 and worked until January 11th 7:45 A.M. he would have been paid at the straight rate for said hours and they would have been regarded as his regular work hours. We do not think their character is altered by the fact that earlier on the calendar day of January 10, 1970 Claimant worked some hours at the overtime rate.

We are persuaded that the regular work hours, hereinbefore referred to, were the regular work hours of a working day and that Claimant is entitled to sick pay for said day.

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 1, 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.