

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19643
Docket Number TE-19683

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
((formerly **Transportation-Communication** Division, BRAC)
PARTIES TO DISPUTE: (
(Peoria and Pekin Union Railway Company

STATEMENT OF CLAIM: Claim of **the** General Committee of the Transportation-Communication Division, BRAC, on the Peoria & Pekin Union Railway, T-C 5855, that:

Claim in favor **of** Operator Mrs. Beverly Thompson for proper **compensation** for service performed on April 21, 1971 a rest day of the position she was filling, first shift at "NS" Office.

Carrier shall now compensate Claimant eight (8) hours at the time and one-half rate less the amount already paid, **or** a total of four additional hours.

OPINION OF BOARD: Claimant was working as an extra operator and was assigned as first shift operator at Washington Street. The regularly assigned operator had rest days of Wednesday and Thursday. Claimant worked Sunday, Monday, Tuesday, Wednesday and Friday in this position and in **a** different position on Saturday. The issue is whether or not Claimant is entitled to over-time pay for working Wednesday.

Carrier's position is that Claimant should not receive the punitive rate for two reasons: 1) Claimant had not worked forty hours in the week prior to Wednesday; and 2) the regular incumbent, **who** was being used as an extra train dispatcher, had a right to return to his regular assignment (having been bumped) on one of the rest days, interrupting the continuity of Claimant's **assignment** and resulting in Claimant having two distinct assignments on the position in question,

The Organization cites the following rules in **ralation** to this matter:

"RULE 4 - Seniority and Promotion

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(i) The senior extra employee shall have preference to all extra work if available and qualified, provided that an extra employee can not claim extra work in excess of 40 hours in his work week if another extra employee who **has** had less than 40 hours in his work **week** is available, except that if filling the assignment of a regular employee he may continue thereon, and will assume the conditions of such assignment, including the work week and rest days thereof. Subject to the foregoing provisions of this Rule 4(i) the extra employee, if **qualified**, **will** perform **service** on the position vacated."

"RULE 12 - 40 Hour Week - Rest Day - Sundays - Holidays

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(h) Rest Days of Extra or Furloughed **Employees.**

To the extent extra or furloughed men may be utilized under applicable agreements or practices, their days off need not be consecutive; however, if they take the assignment of a regular **employee** they will have as their days off the regular days off of that assignment."

"RULE 13 - Relief Work

(a) Except as provided in paragraph **(b)** of this rule, employees shall receive the same compensation in relief service as the employees they relieve.

(b) Regular assigned employees shall not be required to perform relief work except in case of emergency. When used to perform such service they shall be compensated as follows:

Time and one-half of the position where relief service is **performed** with a minimum of eight (8) hours for each twenty-four (24) hour period but not less than the total compensation received on their regular assigned position."

The Organization also relies on Decision No. 31 of the **40-Hour Week Committee** which reads in part:

"...**When** an extra employee takes the assignment of a regular employee, he assumes the conditions of such assignment, including the work week and rest days thereof."

The Organization argues that under Rules **4(1)** and 12 (h) Claimant took the assignment of the regular incumbent and thus assumed his rest days and hence should have been paid the rest day rate - or time and one-half.

With respect to Carrier's arguments, we do not find that the forty hour argument is relevant. Further, the position that the incumbent could have been available on one of the rest days due to being bumped, does not persuade us, since we are not dealing with a hypothetical situation. Further, a simple interpretation of the Rules would negate Carrier's position, since even if Claimant's position **was** divided into two assignments the work of Wednesday under Rule **13(a)** would require premium compensation.

There have been a series of Awards dealing with the precise issue we have in this case. In Award 11859, we said:

"Rest days attach to positions filled, and since **Jacop's** position called for rest days of Sunday, August 25 and Monday August 26, Claimant's work on the latter date was rest day work for which premium is due. This holding accords with the **40-Hour** Week Agreement and prior awards of this Board."

It would appear to be well settled that an extra employee taking the place of a regular employee will receive time and one-half for work performed on either of the rest days of the regular incumbent under provisions of Agreements such as this. This Board has taken this position in Awards 12428, 14096, 14986 and 16019. We believe that our prior thinking on this subject is still appropriate.

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:


Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.