

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21754
Docket Number CL-21490

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(**Express** and Station **Employees**
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8068) **that:**

1. Carrier violated the rules of the Clerks' Agreement, **and** in particular Rules 3, 21, 25 and related rules, when on Saturday, May 25, 1974, it utilized junior unassigned clerk R. P. Adams **on** the position of Night Chief Yard Clerk after he had completed forty (40) straight-time hours as an unassigned clerk beginning Monday, May 20, 1974.
(Carrier File 205-4937)

2. Carrier shall now be required to compensate Clerk M. E. Adams, a senior regularly-assigned **employee**, for eight hours at the rate **of** time and one-half for May 25, 1974, account Carrier utilized the services of **unassigned** Clerk R. P. Adams after he had completed his forty (40) straight-time hours for that work week.

3. Carrier shall **now** be required to compensate unassigned Clerk R. P. Adams for the difference between the straight time rate of pay (already allowed) and the time and one-half rate due account working his earned rest day Saturday, May 25, 1974.

OPINION OF BOARD: Prior to and on Saturday, May 25, 1974, Clerk R. P. **Adams** was an unassigned **employee**. On Monday, May 20, 1974, R. P. **Adams** worked the position of Chief Bill Clerk. Beginning Tuesday, May 21, 1974, R. P. Adams worked **the** position of Night Chief Yard Clerk. He worked this **position** each day through Saturday, May 25, 1974. For service performed **on** Saturday, May 25, 1974, Clerk R. P. Adams was compensated at the straight-time rate of pay. However, the Organization asserts that Adams should have **been** compensated at the time and one-half rate, not at the straight-time rate, for service Claimant performed on the sixth day of his work week. Carrier retorts that Saturday, May 25, 1974, was not a rest day of **the** position Claimant was protecting, and since Claimant assumed the conditions of the position he was filling, this was not a rest day for him either. Accordingly, they argue that Adams was properly compensated at the straight-time rate for service performed this day. Carrier maintains **that** inasmuch as Claimant moved from the Chief Bill Clerk assignment to the Night Chief Yard Clerk

assignment on Tuesday, May 21, 1974, his service thus came within the exception provided by Rule 25(c), the Overtime Rule.

After a thorough **review** of the record before us, it is the opinion of this Board that the claim of Clerk R. P. **Adams** is clearly supported by the provisions of the current Agreement between the parties. Pursuant to Rule 21(i), Adams' workweek consisted of a period of seven consecutive days starting with Monday, May 20, 1974. He thus completed 40 hours of work at the end of his tour of duty on Friday, May 24, 1974. Rule 25, entitled Overtime and Calls, provides that work in excess of forty (40) straight-time hours in any workweek shall be paid for at the time-and-one-half rate, as shall work performed by an **employee** on the sixth and seventh day of his work week. It is manifestly clear that Clerk R. P. Adams completed 40 hours and 5 days of work at the end of his tour of duty on Friday, May 24, 1974. Therefore, consistent with the requirements of Rule 25, any service performed by him in his work-week beyond this time is compensable at the time-and-one-half rate.

While the Carrier alleges that Adams' service came within the exception to the 40-hour workweek agreement provided by Rule 25(c), this Board must respectfully disagree. Carrier's argument is premised on the contention that Adams moved from one assignment to another on Tuesday, May 21, 1974. However, this Board in Award No. 5494 held that moving from one vacancy to another is not the equivalent of moving from one assignment to another. Award No. 5494, a dispute between these same parties, involved a claim patently analogous to the one at hand. This Board there held that the provisions of Rule 25(c) did not apply when an unassigned **employee moved** from **one** vacancy to another. Notwithstanding Carrier's argument to the contrary, this Board does not find Award No. 5494 distinguishable from the claim at hand nor do we consider it palpably erroneous. Moreover, there is no evidence in the record that the Organization has repudiated the findings of that Award as suggested by the Carrier. It is clearly applicable to the dispute before us, and based thereon we hold that the provisions of Rule 25(c) are inapposite to the instant claim.

Although the claim of Clerk **R. P. Adams** is supported by the Agreement between the parties, that of Clerk M. E. Adams is not. There was simply no vacancy for **him** to claim on Saturday, May 25, 1974. Accordingly, he was not entitled to be called for service this day at the overtime rate and his claim is consequently denied.

FINDING: 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 as to Clerk R. P. Adams.

That the Agreement was not violated as to Clerk M. E. Adams.

A W A R D

Claim of Clerk R. P. Adams sustained.

Claim of Clerk M. E. Adams denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.