

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 22426
Docket **Number** CL-22043

James F. **Scearce**, Referee

(Brotherhood of Railway, Airline **and**
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
(**GL-8340**) that:

1. Carrier violated the Agreement between the parties when on March 26, 1975 it abolished certain Relief positions established to relieve the first and third Operator-Clerk positions **and** A. R. **Brand**, regular assigned **second** trick Operator-Clerk, a seven-day **Operator-Clerk in** Chief Train Dispatchers Office, **Akron**, Ohio, thereafter providing rest-day relief for first and third trick thereat, while reducing the second trick Operator-Clerk assignment to a five-day position with **no** rest day relief but retaining the same work-week with rest days of Sunday **and** Monday, and

2. As a consequence, Carrier shall, beginning **June 2**, 1975 **and** continuing until corrected, compensate Claimant A. R. Brand:

(a) Eight (8) hours at pro rata rate (\$42.16)
for each **Monday** held off position.

(b) The difference between the straight time
rate paid and **time** and **one-half** rate (\$21.08)
for each Saturday.

OPINION OF BOARD: **Prior** to March 26, 1975, Operator-Clerks were assigned to provide around-the-clock support to the Chief Train Dispatchers seven days a week. Claimant was assigned as a **second** trick Operator-Clerk -- 3:00 p.m. to **11:00** p.m., with rest days of Sunday and Monday. Relief for the Operator-Clerks **on** their rest days had been accomplished by occupants of regular Relief Positions 9 and 11. As of March 26, 1975, the Carrier abolished Relief Positions 9 **and** 11, and established one new Relief Position for all three shifts; at the same time, **the Carrier** determined to

leave vacant the Operator-Clerk's position on the second trick -- the one occupied by the Claimant, on the basis that workload during the **second** trick on **Sunday** and **Monday** did not support the need for such coverage. Thus, relief was provided the first trick Operator on Sundays **and** Mondays and the third trick Operator on Tuesdays and Wednesdays by the single Relief Operator-Clerk. **No** Operator-Clerk coverage was assigned to the **second** trick on Sunday and Monday tours until June 29, 1976 -- some 15 months later., Petitioner cites applicable provisions of Rule 3 of the Agreement **then** in effect as the basis for its claim; this Rule provides -(in pertinent part) that:

"NOTE: The expressions 'positions' **and** 'work' used in this Rule 3 refer **to service**, duties, or **operations** necessary to be performed the specified number of days per week, and not to the work week of individual employees.

'Work Week.

(a) There is hereby established for all employees **covered** by this Agreement, subject to the exceptions **contained** in this Agreement, a work week of forty (40) **hours, consisting** of five (5) days of eight (8) hours each, with two (2) consecutive days off in each **seven** (7); the work weeks may be staggered in accordance with the Management's operational requirements; so far as practicable the days off shall be Saturday **and** Sunday. This rule is subject to the following provisions:

"Five-Day Positions.

(b) On positions the duties of which **can** reasonably be met in five (5) days, the days off will be Saturday and Sunday.

"Six-Day Positions.

(c) Where the nature of the work is such that employees will be needed six (6) days each week, the rest days will be either Saturday **and** Sunday or **Sunday** and Monday.

"Seven-Day Positions.

(d) **On** positions which have been filled seven (7) days per week ~~any two~~ **(2)** consecutive days ~~may~~ be the rest days with the presumption in favor of Saturday and Sunday.

* * * *

"Deviation from Monday-Friday Week.

(f) **If** in positions or work extending over a period of five (5) days per week, an operational problem arises which the Management contends cannot be met under the provisions of paragraph (b), above and requires that ~~some~~ of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend to the contrary, and if the parties fail to agree thereon, then if the Management nevertheless puts such **assignments** into effect, the dispute may be processed as a grievance or **claim** under this Agreement."

* * * *

Specifically, Petitioner contends that the Carrier has evidenced that the second trick position is a **"Five-Day Position,"** as indicated by Rule 3(b), since no work was assigned on the rest days for the second trick for over a year, and that such work thus could "reasonably be met in five (5) days," and that the Carrier failed to seek a variance as under 3(f) -- "Deviation from **Monday-Friday Week.**" The Petitioner therefore contends the Claimant is entitled to pay at ~~time~~ and one-half for the Saturdays he worked on what should have been his regular rest day, **and** pay at his regular rate for the Mondays he was held out of service as a rest day, but which he should have been allowed to work.

The Carrier contends that the work of the Chief Dispatcher's Office does not cease during the second trick on Sundays and Mondays, that the position of Operator-Clerk on the second trick continued as a "Seven-Day Position," as defined by 3(d), but that work load diminished to the point that coverage was not necessary for the period involved.

The Petitioner's rationale is not well taken here. From the Petitioner's **own** statement of the facts it is apparent that the first trick Operator-Clerk's regular schedule was Tuesday-Saturday **and** the third trick Operator-Clerk worked **Thursday-Monday**; thus the work week for all three tricks was "staggered in accordance with the Management's operational requirements." **Presumably**, this was the same operating procedure that existed before the Carrier altered its practices of providing relief coverage for the second trick Operator-Clerk. **Rule 3(b)** speaks to the reasonableness of **meeting** the duties of the position in five days. The decision of the Carrier to leave such position vacant continuously for **over** a year while **simultaneously** contending a "Seven-Day Position" remained intact raises the question as to how such work -- properly assigned to Operator-Clerks -- went forward during such relief periods. If the Chief Train **Dispatcher's** Office continued to function **during** this period and if the Operator-Clerks' position remained a Seven-Day Position during this period, it follows that the work of **Operator-Clerk** **also** continued during this period. That is not the issue **before the Board**, however, and it is inappropriate to speculate **in** that regard. Based upon the Claim as stated, we find no support, for the Petitioner.

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 disputes involved herein; and

That the Agreement was not violated.

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Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulse*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.