

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Clerk P. H. Leser be compensated for service performed Saturday, August 10, 1940 at the punitive rate of his position, and that Clerk R. K. Ruppert be compensated at the punitive rate of his position for service performed Monday, August 12, 1940.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 10, 1940 R. K. Ruppert, Swing Clerk, Marion Union Station, was assigned to relieve employes as follows:

| Clerk Relieved | Position | Rate of Pay | Hours of Assignment | Day of Week |
|---------------------|--------------|-------------|---------------------|-------------|
| A. W. Furstenberger | Ticket Clerk | \$5.82 | 11 pm- 7 am | Tuesday |
| E. H. Gilmore | Bagg. Master | 5.06 | 11 pm- 7 am | Wednesday |
| E. F. Detwiler | " " | 5.06 | 3 pm-11 pm | Thursday |
| R. H. Stief | Ticket Clerk | 5.82 | 7 am- 3 pm | Friday |
| P. H. Leser | " " | 5.82 | 3 pm-11 pm | Saturday |
| C. L. Netter | Mail Porter | 4.54 | 7 am- 3 pm | Sunday |
| (Unassigned) | | | | Monday |

On August 8, 1940 notice was served under Rule 13 changing the assigned relief day of C. L. Netter from Sunday to Saturday, changing the assigned relief day of P. H. Leser from Saturday to Sunday, and changing the assigned relief day of Clerk E. F. Detwiler from Thursday to Monday, resulting in the following assignments effective August 10, 1940, which continued to be relieved by Swing Clerk Ruppert:

| Clerk Relieved | Position | Rate of Pay | Hours of Assignment | Day of Week |
|---------------------|--------------|-------------|---------------------|-------------|
| R. H. Stief | Ticket Clerk | \$5.82 | 7 am- 3 pm | Friday |
| C. L. Netter | Mail Porter | 4.54 | 7 am- 3 pm | Saturday |
| P. H. Leser | Ticket Clerk | 5.82 | 3 pm-11 pm | Sunday |
| E. F. Detwiler | Bagg. Master | 5.06 | 3 pm-11 pm | Monday |
| A. W. Furstenberger | Ticket Clerk | 5.82 | 11 pm- 7 am | Tuesday |
| E. H. Gilmore | Bagg. Master | 5.06 | 11 pm- 7 am | Wednesday |

The hours of assignment of the position of Swing Clerk prior to August 10, 1940 as set forth above, to which Clerk Ruppert was assigned with Monday as his day of rest, were in conflict with the Hours of Service and Over-

It is the Carrier's position, as cited above, that there is no justification whatever for the claims in the instant case and they should be declined.

OPINION OF BOARD: The facts are not in dispute, Clerk Leser worked seven consecutive days—August 4th through August 10th, 1940; and Clerk Ruppert worked nine consecutive days—August 6th through August 14th.

Rule 39 (a) provides:

"Except as provided in paragraph (b) of this rule, work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven (7), Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time. When such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

Construing the rule the Board which promulgated it observed:

"This rule is designed to guarantee to the employee so far as possible one day of rest in seven * * *."

If this is the purpose of the rule then there can be no doubt that it was violated in this instance. That such is the purpose of the rule we think is clear from its plain and unambiguous terms; and this Division, in effect, so held in Award No. 148 where it was said:

"The carrier's failure to allow Honeymen to have a day off in seven during the period from February 11 to February 22 was in violation of Section 2 of Article VI."

The carrier seeks to justify failure to allow claimants one day off in seven during the periods involved, under Rule 13 (a) under which it may (and did in this instance) change the starting time of employees upon "at least 36 hours' advance notice." When such a change is made the "employee will have five calendar days from the expiration of such notice to decide whether or not he will remain on the position." The argument seems to be that the change in starting time resulted in a change of the off day of the employees and therefore necessitated a seven day stretch without a day off; and that by remaining in their positions the employees acquiesced in the necessity and waived or forfeited any right to time and one-half under Rule 39 (a) for working on their off days. This contention is without merit. Under Rule 13 (a) the carrier, indeed, had the right to change starting times of its employees but that right was subject to the rights accorded the employees under Rule 39 (a). This Division has in effect so held in Award No. 2030. While that case involved a change of hourly starting time the basic question decided cannot be distinguished from the question presented here; and the principle applied in deciding it is equally applicable here.

The carrier seeks to make a distinction between the situation of Leser and Ruppert, arguing that the latter was filling a relief position on a six day assignment. We think there is no basis for such distinction. In contemplation of Rule 39 (a) he was one of a group of "employees necessary to the continuous operation of the carrier who are regularly assigned to such service * * *."

It was urged in behalf of the carrier that the claims should be disallowed because claimants lost nothing; that during the year they had the same num-

ber of days off as they would have had if the change had not been made. That is beside the issue. The essence of the violation of Rule 39 (a) was in requiring claimants to work seven or more consecutive days without a day of rest.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the agreement.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.