

Award No. 2484
Docket No. CL-2532

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood that A. W. Zander be paid the difference between straight time and time and one-half the rate of Clerk-Caller, \$5.365, for work performed Tuesday, February 23, 1943, from 4:00 P. M. to 1:00 A. M., less meal period.

EMPLOYES' STATEMENT OF FACTS: Rule 1 of the Agreement of October 1, 1942, between the parties reads in part:

"RULE 1 EMPLOYES AFFECTED These rules shall govern the hours of service and working conditions of the following class of employees:

"MECHANICAL

"Seniority Class One — Clerical Workers.

"Seniority Class Two — Engine Crew Callers, Messengers.

"(B) All the rules of this Agreement, excepting specifically Rules 5 to 12, both inclusive, Rules 14 and 15, and Rules 28 to 43, both inclusive, shall apply to the following positions and the occupants thereof:

"Chief ClerkMechanical Department.

"Engine DispatchersMechanical Department."

Mechanical Department employees covered by Rule 1, titles of positions, rates of pay, hours of service, rest days and Class One seniority as of date of the instant claim were as follows:

EMPLOYEE AND TITLE OF POSITION	RATE	HOURS	REST DAY	CLASS ONE SENIORITY
G. W. Hill, Chief Clerk	209.40	8:00 am to 5:00 pm	Sunday	
W. E. Mulvihill, Engine Dispatcher	245.40	7:30 am to 4:30 pm	None	11- 1-14
Frank Conroy, Engine Dispatcher	198.40	5:30 pm to 2:30 am	None	7- 1-18
Ethel McDonald, Steno-Clerk	6.19	8:00 am to 5:00 pm	Sunday	9-11-23

"This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy."

This dispute has not been referred to the Committee provided for in Article 14, and until that is done and the Committee then fails to dispose of the dispute, the dispute cannot be brought before this Board.

III.

The VACATION AGREEMENT OF DECEMBER 17, 1941 * * * ; INTERPRETATIONS THEREON; AWARD OF REFEREE IN CONNECTION THEREWITH support the Carrier's method of payment for work performed on the Roundhouse Clerk position on February 23, 1943, while its incumbent was absent on his vacation with pay.

As pointed out under Item I, the Carrier compensated A. W. Zander for work performed from 4:00 P. M. February 23 to 1:00 A. M. February 24 in accordance with Article 12 (a) of the VACATION AGREEMENT OF DECEMBER 17, 1941. In addition to Article 12 (a), the Carrier was further guided by the example given by Referee Morse in the AWARD OF REFEREE DATED NOVEMBER 12, 1942. This Award begins on Page 19 of Exhibit A. The Carrier particularly refers to Illustration (b) on Page 101, Referee's Decision, Question No. 1, Section I of the Award. Illustration (b) and the sentence following it are quoted as follows:

"(b) A shop craft employe on the third shift is allowed a 6 day vacation. It is necessary to fill his position and an employe is transferred from the second shift. The transferred employe claims that schedule rules with respect to changing shifts and doubling over apply to filling vacation vacancies and claims time and one-half for the first shift he works in filling the vacationing employe's position, and time and one-half for the first shift he works upon return to his position. It is the carriers' position that these punitive payments are not required."

"It is the referee's opinion that the carriers' position on this illustration is absolutely sound and within the meaning and intent of the vacation agreement. * * *"

The example given in the illustration quoted above is identical with the case here. Therefore, in the event that this Board assumes jurisdiction over disputes involving the VACATION AGREEMENT OF DECEMBER 17, 1941, the Carrier contends that Referee Morse's decision quoted above is controlling in this dispute.

OPINION OF BOARD: The employe, A. W. Zander, for whom this claim was brought was the regular occupant of the position of Caller, assigned to work from 7:00 A. M. to 4:00 P. M., six days per week with Monday off. John Taylor was the regular occupant of the position of Clerk-Caller assigned to work from 4:00 P. M. to 1:00 A. M., six days per week with Saturday off. Both positions were considered necessary for the continuous operation of the carrier and were assigned and filled on all seven days of the week. On February 23, 24, 25 and 26, 1943, Taylor was on vacation and Relief Clerk-Messenger B. A. Gassmeyer was assigned to fill the vacancy caused by Taylor's absence. Gassmeyer reported ill on February 23 and Zander, who had worked his own assignment from 7:00 A. M. to 4:00 P. M., was immediately required to work the Clerk-Caller position from 4:00 P. M. to 1:00 A. M., thereby working 16 hours continuously. He was paid the straight time rate on both positions and he claims the difference between straight time and time and a half on the second eight hours. Rule 37 provides that time in excess of eight hours, exclusive of meal period, on any day, will be considered overtime and be paid for at the rate of time and one-half. The words "on any day" have been construed to mean a 24 hour period computed from the starting time of the first assignment.

The carrier contends that the claim falls within the second paragraph of Rule 37 of the current agreement which provides that when assigned employees exercise seniority from one assignment to another they shall be paid at pro rata rates for the regular eight hour assignment of the shifts so worked. There is no merit in this contention. Zander did not exercise his seniority within the meaning of this provision of the schedule when he was required to work Gassmeyer's assignment because of Gassmeyer's illness.

The carrier also contends that as Taylor, the regular occupant of the position of Clerk-Caller, was on vacation, the dispute arises out of the application of the Vacation Agreement of December 17, 1941, to the facts and not the current clerks' agreement. It is urged that as the matter of vacation pay is involved, the dispute must be handled in accordance with Article 12 (a) of the Vacation Agreement.

While it might be said that Zander was working a sick relief for Gassmeyer instead of vacation relief for Taylor, we think the result will be the same in either event. The relationship of existing working rules to the Vacation Agreement was fully discussed in Award No. 2340 and we hereby reaffirm the interpretations therein made. It was the expressed intent of the signatories of the Vacation Agreement that existing rules and agreements as to working conditions and rates of pay were to remain as they were until changed by negotiation. In order to expedite the Vacation Agreement and to provide a method to negotiate adjustments in existing agreements which might prove inimical to the desired results of the Vacation Agreement, the provisions relied upon by the carrier were inserted in the Vacation Agreement. The purpose of the Vacation Agreement was to provide a means to negotiate changes in rules standing in the way of an economical administration of the Vacation Agreement, not to adjust claims arising out of disputes regarding working conditions and rates of pay. No negotiations have been had under the method set up by the Vacation Agreement, at least none have been called to our attention, which in any way contribute to a different result than we have indicated. The claim is clearly before this Board for decision.

The position assumed by the clerks' organization is the correct one and this claim should be sustained.

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 employe involved in this dispute are respectively carrier and employe 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 under the provisions of Rule 37 of the current agreement, the employe, A. W. Zander, is entitled to the difference between straight time and time and one-half for the second eight hours he worked as relief for the position of Clerk Caller, as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of February, 1944.