

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate its agreement with the Brotherhood when on January 29, 1942, it established at Toledo, Ohio, by Bulletin No. 5, a clerical position not necessary to continuous operation with assigned hours 1:00 P. M. to 9:00 P. M., (on June 29th changed to run from 10:00 A. M. to 6:00 P. M.) Monday thru Friday, blanking the position on Saturday and assigning the regular occupant thereof to work a position necessary to continuous operation on Sunday at Delta, Ohio, with assigned hours 10:00 A. M. to 6:00 P. M. (on September 13th changed to run from 8:00 A. M. to 4:00 P. M.) and refusing to compensate clerk W. D. Troendle, the regular assigned employee

(a)—at time and one-half rate for eight (8) hours on Sunday representing the number of hours regularly assigned through the week day, and

(b)—at time and one-half rate for an additional two (2) hours for services performed on Sunday outside the regular hours assigned through the week day, and

(c)—at pro rata rate for each Saturday the employee was required to suspend work.

(2) That the Carrier shall now be required to compensate clerk W. D. Troendle or any other occupant of the same position at

(a)—time and one-half rate for eight (8) hours on Sunday at Delta, Ohio, representing the number of hours regularly assigned through the week day at Toledo, Ohio, from July 5, 1942, until such time as the violation has been corrected, and

(b)—time and one-half for an additional two (2) hours for services performed at Delta, Ohio, on Sunday outside the regular assigned hours through the week day at Toledo, Ohio, from September 13, 1942, until such time as the violation has been corrected, and

(c)—pro rata rate for eight (8) hours each Saturday the employee was required to suspend work, effective as of July 11, 1942, and continuing until such time as the violation has been corrected.

EMPLOYEES' STATEMENT OF FACTS: Immediately prior to January 29, 1942, the Carrier maintained the following station force at Toledo, Ohio:

Mr. Troendle works five days per week at Toledo, 10:00 A. M. to 6:00 P. M., and one relief day at Delta, 8:00 A. M. to 4:00 P. M. The Employees contend that he should work the same hours at Delta that he works at Toledo. The claim is made under Rule 20, the Starting Time Rule, which has been interpreted to mean that regularly assigned employees will have the same starting time daily.

Rule 20 does not apply to relief positions. Relief positions are for the purpose of relieving seven day per week positions. A regularly assigned relief employe may and usually does relieve more than one shift and it is very seldom that any two of the shifts start work at the same time. As previously stated, there are three clerks employed on three shifts, starting at 8:00 A. M., 4:00 P. M. and midnight at Delta. Suppose these three shifts all worked seven days per week, they would all require relief one day per week, and it would be impossible for the relief clerk to have the same starting time daily. He would have to start one relief tour of duty at 8:00 A. M., one at 4:00 P. M. and one at midnight on different days. Under such circumstances, and this is the usual case where there is more than one seven day job to relieve, it would be impossible for the relief clerk to have the same starting time daily. We have on this railroad a couple of yards where there are several seven day yard clerk positions relieved by regularly assigned relief clerks on the seventh day and the relief clerk always works the same hours as the position being relieved and the starting time varies from day to day. These yard clerk positions also come under the Clerks' Agreement but no claim has ever been made that the starting time of relief clerks should be the same daily.

Besides, Rule 20 does not provide for the same starting time daily. The rule reads that "Regular assignments shall have a fixed starting time" and says nothing about the starting time being the same daily. Award 967 says that exactly the same wording in another carrier's contract means the same time each day of the assignment but that decision, besides reading something into the rule that is not there, apparently gave no consideration to the assignments of relief clerks. They simply cannot have the same starting time daily.

If there is to be a starting time rule for relief positions it should provide that the starting time of relief positions shall be the same as the positions relieved in harmony with the pay of relief positions which, under Rule 57, provides that the relief employe shall be paid the rate of the position relieved. The foregoing being true, and it can be no other way under a general application, it was proper for relief clerk Troendle to start work at Delta at 8:00 A. M. which was the starting time of the shift he relieved.

When this relief position was first established at Delta the starting time was erroneously fixed at 10:00 A. M. to agree with the starting time at Toledo. The Carrier discovered the error and voluntarily changed the starting time to 8:00 A. M. and paid Mr. Troendle two hours overtime at time and one-half retroactive as far as permitted.

As to the Employees' claim (3) that Mr. Troendle does not work six days per week, therefore, he should be paid one additional day at straight time rate.

It is difficult to imagine on what assumption this claim is made. The Employees' Statement of Claim recites that Mr. Troendle was assigned to a position at Toledo, Monday through Friday, five days, and at Delta on Sunday, making a total of six days. So far as the Carrier can see there are no grounds for the claim.

This claim was first presented in writing to the designated official on August 20, 1942, therefore, according to Memorandum of Understanding No. 7, if any compensation should be found to be due under the claim, it should not be for the period prior to July 21, 1942.

OPINION OF BOARD: This dispute invokes a question of the proper application of the exception to the standard Sunday and Holiday rule. Claimant has an assignment of five days work at Toledo, Monday through Friday.

Sunday he is assigned to work at Delta to relieve an employe holding a position "necessary to continuous operation" whose rest day is Sunday. Claimant is in reality assigned to two classes of work at two different places. The issue presented is whether the arrangement by which this is accomplished brings his Sunday work under the exception to the Sunday and Holiday rule, entitling him to compensation at straight time only.

The situation presents an anomaly which may be the result of a misapprehension as to the effect of the decision of this Board in Award No. 1635. It was there held that two employes, holding positions "necessary to continuous operation" were not entitled to time and one-half for Sunday work where their relief day was filled by employes who were otherwise on five day assignments, as is the claimant in this case. That holding was made under a special agreement with the carrier permitting such an arrangement with the employes assigned to the relief work. From the disallowance of the claims of the employes, regularly assigned to the positions necessary for continuous operation, for time and one-half, the deduction is made that the relief employes were properly assigned in contemplation of the exception to the Sunday and Holiday rule. This deduction would have considerable force were it not for the special agreement under which the relief employes were assigned. We think it is clear, however, that, on this phase of that dispute, the decision rested on the special agreement. Of course, in contemplation of that agreement, permitting it, those relief employes were properly assigned.

In another phase of the dispute, however, the claim of a relief employe, with the same kind of assignments as those of claimant here, was allowed for time and one-half for Sunday work on the position necessary to continuous operation. Upon the authority of the decision on that aspect of the dispute, claimant here is clearly entitled to time and one-half for Sunday work.

Claimant urges that he is also entitled to time and one-half for an additional two hours because of the difference in starting time between his Sunday relief assignment and his regular week day assignment. This contention is untenable. He was not working his own position on Sunday. He was working a position necessary to continuous operation. Necessarily, his hours must be governed by the hours of the man whom he relieved. His status with respect to that position is not different than if he were furloughed or in extra service.

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

Claim sustained as to items 1 (a) and 2 (a) only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.