

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the rules of the Schedule for Clerks effective August 1, 1929, by failure and refusal to fill a continuous service assignment of Machine Bill and Yard Clerk, held by Clerk D. H. Cantrell, North Kansas City Yards, for the full established hours of assignment, 8:00 A. M. to 4:00 P. M., seven days per week, on January 25, 26, 27, 28, 30 and 31, and February 1, 1943, a total of seven days or fifty-six (56) hours.

(b) Clerk Robert C. Baldwin, who held position of Machine Bill and Yard Clerk on preceding shift, hours of assignment 12 midnight to 8:00 A. M., be compensated for 34 hours and 45 minutes at punitive rate of the assignment. The regular occupant, D. H. Cantrell was laying off and Clerk Baldwin was used to fill Clerk Cantrell's assignment, 21 hours and 15 minutes out of a total of 56 hours the position was vacated by Clerk Cantrell.

EMPLOYEES' STATEMENT OF FACTS: Three positions of Machine Bill and Yard Clerks are required and maintained at North Kansas City Yards, seven days a week, twenty-four (24) hours a day. The occupant of each position is assigned eight consecutive hours in accordance with paragraph (b) of Rule 2 of the Schedule for Clerks. The established daily hours of assignment for the three positions are 12 midnight to 8:00 A. M., 8:00 A. M. to 4:00 P. M. and 4:00 P. M. to 12 midnight.

Clerk D. H. Cantrell, regular assigned occupant of the day shift, 8:00 A. M. to 4:00 P. M., failed to protect the assignment on January 25, 26, 27, 28, 30 and 31 and February 1, 1943, reporting that he was sick. According to statement of Carrier, no qualified extra or furloughed clerks were available to protect the assignment.

Clerk R. C. Baldwin, occupant of the preceding shift, 12 midnight to 8:00 A. M., was instructed to protect Clerk Cantrell's shift on January 25 from 8:00 A. M. until 10:15 A. M., and was allowed 2 hours 15 minutes punitive time. On January 26, Clerk Baldwin worked the assignment from 8:00 A. M. until noon, and was paid 4 hours punitive time. January 27, 8:00 A. M. until 12:15 P. M., or 4 hours, 15 minutes punitive time; January 28, 8:00 A. M. to 10:00 A. M. at punitive rate; January 30, 8:00 A. M. to 9:30 A. M. at punitive rate; January 31, 8:00 A. M. to 1:15 P. M., 5 hours, 15 minutes punitive rate, and February 1, 8:00 A. M. until 10:00 A. M., 2 hours at punitive rate. Twenty-one (21) hours and fifteen (15) minutes were worked by Clerk Baldwin at punitive rate, while thirty-four (34) hours and forty-five (45) minutes of the seven day vacancy of 56 hours was not filled.

OPINION OF BOARD: Baldwin was assigned from 12:00 midnight to 8:00 A. M. and Cantrell from 8:00 A. M. to 4:00 P. M. as Machine Bill and Yard Clerks at the Carrier's North Kansas City Yards. There was also another trick on this 24-hour, 7-day position, which was filled by another employe who worked from 4:00 P. M. to 12:00 midnight. From January 25 to February 1, 1943, inclusive, Cantrell laid off at his own request on account of illness. During said period Baldwin worked a total of 21 hours and 15 minutes overtime on the position rendered vacant by Cantrell's absence. The claim is that Baldwin should have been permitted to work 34 hours and 45 minutes additional at punitive rate, to fill out a total of 56 hours encompassed by Cantrell's assignment. It is not disputed that there were no extra or furloughed employes available during the absence of Cantrell. The question before us is whether the Carrier had a right to partially "blank" Cantrell's regular eight-hour assignment during each day of his absence, when there was another competent employe available who was desirous of filling Cantrell's regular eight-hour assignment on an overtime basis.

The Petitioner stands upon the proposition that Cantrell's regular eight-hour assignment could not be "blanked" in whole or in part during his absence since said assignment pertained to a seven-day continuous position, under which the incumbents were obligated to work on Sundays and holidays at the pro rata rate. Reliance is placed upon Rules 2 (b), 2 (j) and 8 (b) of the effective Agreement of August 1, 1929, upon Award 1214, and upon numerous other Awards in which the so-called Standard Sunday and Holiday Rule has been interpreted and applied. For ready reference, we quote the Rules with which we are here concerned:

"Rule 2.

"(b) For positions requiring continuous service, eight consecutive hours, without meal period, will be assigned as constituting a day's work, in which case, not to exceed twenty minutes shall be allowed in which to eat, without deduction in pay when the nature of the work permits. Preference of the shifts shall be governed by seniority. After a shift is selected and assigned, there shall be no change except in case of vacancy."

"(j) At offices where three-shift positions are employed, with continuous service, the starting time for the first shift will be between 7:00 and 8:00 A. M. This is not intended to prohibit single or double-shift assignments, in addition to the continuous assignments, with the starting time to fit the requirements of the service."

"Rule 8.

"(a) Only such Clerks as shall be required to perform the business of the Company shall be required to work on Sundays or the Legal Holidays, namely:

New Year's Day
Washington's Birthday
Decoration Day
July 4
Labor Day
Thanksgiving Day
Christmas Day

"(b) 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 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 employes regularly assigned to work full time on Sundays and employes called to fill their places on such regular assignment will be compensated at the pro rata rate of the position."

The Carrier says that there is nothing in the quoted Rules that requires a position, such as this, to be filled on any day the occupant thereof lays off of his own accord; that Award 1214 is unsound in its reasoning, if it may not be distinguished upon the facts; and that the Awards of this Board applying the Standard Sunday and Holiday Rule are not in point.

The Standard Rule is limited by specific terms to "employees necessary to continuous operation of the carrier and who are regularly assigned to such service." See Decision No. 1621 of the United States Railroad Labor Board. Rule 8 of the Agreement before us contains no such express provision; but Petitioner argues that this is to be implied from a consideration of the quoted rules as a whole. We are unable to follow this reasoning. The words, "continuous service," found in Rules 2 (b) and 2 (j) clearly have reference, in the first instance, to what constitutes a day's work and, in the second, to the starting time where three shifts are employed. There is no basis for the assumption that these Rules have any reference to employees necessary to the continuous operation of the Carrier. Rule 8 (a) pertains to certain employees who may be required to work on Sundays and Legal Holidays in performing the business of the Carrier, but does not identify such work as necessary to continuous operation. It is conceivable that the Carrier might find it expedient to require its Clerks to perform work on Sundays and holidays that was not necessary to continuous operation. As already suggested, Rule 8 (b) is silent as to necessary continuous operations, and we may add that there is nothing in that Rule to remotely suggest that said subject was inferentially intended to be covered.

We are not unmindful that in Award 1214, which involved these same parties and the same Agreement, it was said that Rule 8 and the Standard Sunday and Holiday Rule are "analogous" and that both "were intended to apply to positions necessary for the continuous operation of the carrier." We have tried in vain to harmonize that statement with what we have already pointed out as being, in our judgment, the clear import of the Rules with which we are here dealing. With all due deference to the distinguished jurist who wrote the opinion in Award 1214, and to the members of this Board who concurred in his views, we have felt obliged to reach a different conclusion.

Applying what we have said to the facts of this case, we hold that the Carrier did not violate the Agreement when it failed to accord the Claimant a full eight-hour assignment on each day that Cantrell was absent on account of illness.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.