

Award No. 2980

Docket No. CL-2913

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 the System Committee of the Brotherhood that Ticket Seller R. C. Berry be paid one day's pay at time and one-half his daily rate of \$7.825 for Wednesday, December 8, 1943; that Ticket Seller J. J. Burke be paid one day's pay at time and one-half his daily rate of \$7.825 for Thursday, December 9, 1943.

EMPLOYES' STATEMENT OF FACTS: The employees and positions (as of date of claim) in the Union Station Ticket Office of the Carrier at Kansas City, Missouri, pertinent to this case are as follows:

EMPLOYEE AND TITLE OF POSITION	RATE	HOURS	REST DAY
Gladys White, Reservation Clerk	\$7.315	7:00 A. M. to 3:30 P. M.	Sunday
Charlotte King, Relief Reservation Clerk	various	various	Thursday
R. C. Berry, Ticket Seller	\$7.825	3:50 P. M. to 12:20 A. M.	Wednesday
J. J. Burke, Ticket Seller	\$7.825	3:50 P. M. to 12:20 A. M.	Thursday

The position of Reservation Clerk, Gladys White, incumbent, is a position necessary to continuous operation of the railroad and is relieved on the rest day, Sunday, by Charlotte King, regular assigned Relief Reservation Clerk. On December 8 and 9, 1943, Gladys White laid off, reportedly account of sickness, and the position was not filled on those dates.

There is an agreement between the parties dated October 1, 1942, Rule 43 of which reads:

"RULE 43. SUNDAY AND HOLIDAY WORK. 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 opera-

written agreement." It appears now that in paying these employees rate and one-half for holidays the Carrier has been doing so in error since the date of the agreement and adjustment is in order. If the Referee was in error, his entire Award is a nullity.

The Carrier also directs the Board's attention to the statement contained in the last paragraph of the Opinion, in Award 2467, to wit:

"* * *

We have not considered what the case would be under a rule lacking the express obligations of the last paragraph of Rule 43, and have intended to indicate no opinion as to what our view would be in such circumstances."

What are the "express obligations" of the last paragraph of Rule 43? Aren't they merely the obligations spelled out in so many words what all of the Awards on the Sunday and Holiday Rule have held, namely, that in order to be a position necessary to continuous operation, it must be filled seven days per week? And that the only penalty for not filling it each day is that the incumbent will receive punitive rate for the Sunday in the week in which the job was not filled the full seven days? See Awards 336, 594, 750, 1853 and others. In Award 2675, Docket CL-2711, rendered in a dispute between this Carrier and the Employees, and in which Rule 43 was involved. The Referee states exactly what the Carrier has always contended, that "* * * the concluding paragraph of Rule 43 merely amplifies and implements the standard Sunday and Holiday Rule * * *". We respectfully ask the Board, therefore, to so properly interpret the Rule, because the "express obligations of the last paragraph of Rule 43" are in nowise changed or different from the obligations entailed in the standard Sunday and Holiday Rule, and which obligations are fully set out in the Awards mentioned, particularly Award 594.

OPINION OF BOARD: The question to be determined in this case is whether the obligation of the Carrier under Rule 43 of the current Agreement to fill a position necessary to the continuous operation of the Carrier seven days each week when it is possible to do so, requires that a regularly assigned employee be given the work at punitive pay on his day of rest when relief and extra employees are not available.

The record shows that Gladys White was the occupant of the position of Reservation Clerk in the ticket office of the Carrier at Kansas City, Missouri, a position necessary to the continuous operation of the Carrier. The Claimants held position as ticket sellers in the same office, Wednesday being Berry's day of rest and Thursday being Burke's rest day. On Wednesday, December 8, 1943 and Thursday, December 9, 1943, Gladys White laid off on account of illness and her position was not filled on those dates.

Rule 43 provides in part that all positions necessary to the continuous operation of the Carrier will be filled seven days each week when it is possible for the Carrier to do so. It is the contention of Claimants that they were available for the work and that they should have been given the work even though it necessitated their working on their rest days.

It is the contention of the Carrier that the words "when it is possible for the Carrier to do so," contained in the last paragraph of Rule 43, requires the filling of the position with a relief man or extra employees if available, but that it never contemplated the calling of regularly assigned employees to perform the work. This contention was squarely decided against the Carrier in Award No. 2467. If any such limitation upon the effect of the rule had been intended, it would have been a simple matter to have limited the rule by express statement. As an interpreter of the contract, we must assume that all oral understandings and agreements had at the time of and prior to its execution were merged therein.

The Carrier further contends that it was under no obligation to assign the work to an employee who was taking his day of rest. We said in Award No. 2467, that the Carrier was obliged to exhaust all possibilities in filling the position. While we think that the term "exhaustion of all possibilities" used in that award should be circumscribed by a rule of reasonableness, we are of the opinion that

it requires the calling of regularly assigned employees on their day of rest to perform the work of a position essential to the operation of the Carrier when there are no extra or relief men available. See also Award No. 2341.

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 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 dispute involved herein; and

That the record supports a sustaining award.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 21st day of November, 1945.