

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Agreement when it blanked a seven-day position of ticket clerk in Ticket Office, Memphis, Tennessee, for four days in April, 1944.
2. The senior ticket clerk available for work on April 27, 28, 29 and 30, 1944 be compensated at eight hours penalty rate for each of these days.

EMPLOYES' STATEMENT OF FACTS: The ticket clerk positions in the Memphis Ticket Office are seven day positions. Regular relief clerks are used to relieve the ticket clerks on their seventh day. Extra clerks are used for extra work occasioned by employees laying off or being on vacations.

On April 27, 28, 29 and 30, 1944, regular ticket clerk position No. 232, rate \$7.17 per day, hours 3 P. M. to 11 P. M. held by Mrs. Holwell remained unfilled because extra ticket clerk who had been filling her position was transferred to position No. 578, same hours and rate, due to Mrs. Ewing, the regular occupant, being off sick.

There were no other extra ticket clerks available. Instead of filling this seven day position with one of the regular clerks from the first trick at the penalty rate, the carrier blanked the position and proceeded to have the Ticket Agent and Head Ticket Clerks (excepted positions) protect the work at the ticket window. This procedure resulted in two distinct violations; first, blanking a seven day position and second, permitting excepted employees to perform work under the scope of the Agreement.

Grievances were filed in behalf of senior ticket clerks who were available and qualified for the work when this position was blanked. Carrier contended that they were not required to place someone on job 232 which was left unfilled because the regular incumbent was on vacation. Employees contended that the seven day rule was not modified or changed by the vacation Agreement. The case has been progressed through the usual channels to the highest officer of the Carrier who handles such matters without securing settlement on the property.

POSITION OF EMPLOYES: There is in evidence between the parties an agreement bearing effective date of June 23, 1922 and revised September 1, 1927 which contains the following rules:

of the employe representative at the hearing on disputes over the meaning of the Vacation Agreement, no vacancy existed on Mrs. Howell's position while she was on vacation.

In view of the facts and circumstances in this case, the Carrier maintains it has complied with the provisions of the existing agreement and that its actions were apt and proper. It is the further position of the Carrier that a decision sustaining the employes would entail a modification of the existing rules agreement and this Board is without the authority to do this; the changing of rules is a matter for negotiation or mediation and cannot properly come before the National Railroad Adjustment Board.

OPINION OF BOARD: The ticket clerk positions in the Memphis Ticket Office are Sunday positions. Regular relief clerks are used to relieve ticket clerks on their seventh day. The clerks are used for extra work occasioned by employes laying off or being on vacations. April 27, 28, 29 and 30, 1944, regular ticket clerk position No. 232, rate \$7.17 per day, hours 3:00 P. M. to 11:00 P. M., remained unfilled because extra ticket clerk, who had been filling the position, was transferred to Position No. 578, same hours and rate, due to the regular occupant being off on account of illness. There were no other extra ticket clerks available. The Carrier did not fill this seven day position with one of the regular clerks from the first trick. The Carrier blanked the position and proceeded to have the Ticket Agent and Head Ticket Clerks (excepted positions) protect the work at the ticket window.

The Carrier asserts the practice for a number of years in this ticket office was for the employes doing the type of work as in this case to cooperate and fill each other's positions as occasion required, in sickness, vacation or emergency occasions, and this conduct on the part of the employes established the practice at this station, and by doing so the parties have placed their own construction on the Agreement.

The Employes contend Rule Scope and Rule 42—Sunday and Holiday Work Rule—have been violated by the Carrier. These rules appear in the position of the Employes, shown above, and need not be repeated.

The exception to the standard Sunday and Holiday rule which has to do with "employes necessary to the continuous operation of the Carrier", is positions so assigned may not be blanked is fully covered in Awards 561, 750, 1635, 2467, 2536, 3049, 3054, 3101, 3193, 3222 and 3223, and sustains the Employes' contention with respect thereto.

The Carrier is not privileged to use an excepted employe, or a person not covered by the applicable agreement, to furnish relief or perform the work of a position within the agreement; this Board has held when this is done, the carrier violates the agreement. See Awards 631, 751, 1209, 1210, 2387, 2506, 2686, 2706, 3101, 3191, 3192, 3193.

Because the regular occupant of position No. 232 was away on vacation on the days her regular position was "blanked" does not change or modify in any way Rules 1 and 42 of the Agreement. Our holdings are that until such time as the parties to the Rules Agreement modify or change that Agreement to harmonize with the National Vacation Agreement, the provisions of the former agreement remain in full force and effect. Awards 2467 and 3271 affirm in such situations the employes have a correlative right to the work.

Our rule is that the Claimant will be allowed "the rate which the employe to whom it was regularly assigned would receive if he had performed the work". Awards 2346, 2695, 2823, 3049, 3193, 3271.

The contention of the Carrier with reference to the practice over a period of years on the part of the employes as constituting the construction of the Agreement between the parties, while in some cases proper from a factual standpoint, is not meritorious in the instant case, with reference to the Agreement and does not abrogate it.

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 Carrier violated the Agreement, and the claim should be sustained as provided for in the Opinion.

AWARD

Claim (1 and 2) sustained as provided for in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.