

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

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

(1) That the Carrier violated the rules of the Clerks' Agreement when it failed to call Weighmaster Mike Gasper for the performance of work regularly assigned to his position on Sunday, September 9, 1945, and

(2) That Carrier shall now compensate employe Mike Gasper for one day's pay at time and one-half rate covering the date in question.

EMPLOYEES STATEMENT OF FACTS: Employe Mike Gasper is the regularly assigned incumbent of position of Weighmaster at No. 8 Scale, Lorain, Ohio. This position works six days each week, Monday to Saturday inclusive. On Sunday September 9, 1945, 104 cars of ore were weighed on No. 8 Scale by employe Kauffman who is the regular assigned Weighmaster at No. 5 Scale, which position is recognized as necessary to continuous operation and works seven (7) days each week. There was no ore scheduled to arrive Sunday September 9, 1945 and when the ore showed up the Carrier instead of calling Mike Gasper regularly assigned Weighmaster at No. 8 Scale to weigh the cars of ore, transferred the employe in seven day service from his position at Scale No. 5 to perform the work that should have been performed by Mr Gasper.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing effective date of February 1, 1945 which contains the following rules:

Rule No. 7 (Authorizing Overtime) reads as follows:

"No overtime shall be worked or permitted unless by direction of proper authority, except in cases of emergency where advance authority is not obtainable.

"In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preferences, except in cases of emergency, when the Company shall have the right to assign other employes. The same principle shall apply in working extra time on Sundays and holidays." Rule No. 8 (Notified or Called) reads as follows:

require that the man regularly assigned to a position be used when overtime is necessary on his position, the requirement being merely that employees regularly assigned to that class of work be given preference, except in cases of emergency, when the Company shall have the right to assign other employees (employees of another class). The situation requiring this temporary assignment was an emergency within the meaning of the second paragraph of Rule 7, above quoted, resulting from bad weather conditions. If the rain had not occurred, the cargo of ore would have been unloaded and the cars containing the ore would all have been weighed prior to the first trick on September 9, 1945. No overtime was necessary in order to perform the work above described. It was only necessary to temporarily transfer from No. 5 Scale to No. 8 Scale an employee who was regularly on duty at No. 5 Scale, with no work to do there and available for use at No. 8 Scale, and this employee was regularly assigned to the same class of work as Mr. Gasper. Therefore, even if the Claimant had been the only employee considered to be regularly assigned to this class of work, he has no cause to complain of the assignment of another employee in view of the emergency which existed.

For the foregoing reasons, the Carrier submits that the claim should be denied.

OPINION OF BOARD: At Lorain, Ohio, Carrier maintains a flat scale, No. 5, at which weighmasters are assigned to work seven days a week, and a gravity scale, No. 8, at which weighmasters work only six days a week, with Sunday off. Scale No. 8 is ordinarily used for weighing ore. Usually no ore boats docked at the Lorain Docks are unloaded on Sunday so that there is no ore to be weighed on Sundays. However, the unloading of an ore boat was delayed by rain and it became necessary to weigh ore on the Sunday in question.

Instead of calling Claimant, the regular occupant of the position of weighmaster at Scale No. 8, to do this weighing, Carrier used the weighmaster then on duty at Scale No. 5 to weigh the ore on Scale No. 8.

Petitioner contends Carrier violated Rule 7 which provides in effect that in working overtime, and extra time on Sundays, employees regularly assigned to the class of work for which overtime is necessary shall be given preference except in cases of emergency.

Carrier's contention that Rule 7 is not applicable because an emergency existed is untenable. The delay in unloading the ore boat was caused by rain affecting the proper functioning of the conveyor belts. But that is not shown to be "an unforeseen combination of events" which characterizes an emergency.

Nor can Carrier's contention that the weighmaster from Scale No. 5 was temporarily assigned to the position at Scale No. 8 excuse it from compliance with Rule 7.

It has been decided by Award 336 that a six-day position and a seven-day position belong in different classes. Such was also the apparent holding in Award 2282 on the question of preference in performing the extra time work of a position. And in Award 1630, involving a rule similar to Rule 7, it was held that such rule "has reference to the particular class of work done by the individual employee." See also Award 1631. Furthermore, the record in this case shows Rule 7 has been so interpreted by the parties because it has been the practice of Carrier to call Claimant for extra time work on Scale No. 8.

It seems clear to us that under the application of Rule 7 to the situation before us Claimant was entitled to preference in doing the work in question over the weighmaster regularly employed at Scale No. 5.

Accordingly, and in conformity with the prior Awards of this Division, the claim must 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 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 as contended by Petitioner.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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