

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**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood that Miss Alice Friedeck, Check Clerk, San Antonio Freight Station, be paid one day at \$7.02 for day's work lost, because Carrier arbitrarily reduced her week's work from 6 to 5 hours in the calendar week of August 20th, 1945, in violation of Rule 45 of the Agreement currently in effect.

EMPLOYES' STATEMENT OF FACTS: The first paragraph of Rule 45 deals with employees and provides for their compensation. The second paragraph reads as follows:

"Nothing in this agreement shall be construed to permit the reduction of days for the employees covered by Groups 1 and 2, Rule 1, below six (6) days per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

The Carrier, in admitted violation of Article VII of the Agreement, required Miss Alice Friedeck to accept and observe Friday, August 24th, 1945, as a rest day, thus arbitrarily reducing her work-week from 6 days to 5 days in the calendar week of August 20th, 1945. This reduction of her work days below 6 days per week constituted an obvious and a known violation of Rule 45. This is the claim of the Brotherhood that Miss Friedeck be made whole for the wage loss which she sustained because of Carrier's violation of the Agreement.

Miss Alice Friedeck exercised her seniority on, was assigned to, and began service on Check Clerk Job No. 101 in the San Antonio Freight Station Monday, August 20th, 1945. She was the regularly assigned and duly recognized incumbent of Check Clerk Job No. 101 in the week of August 20th, 1945, the period involved in this dispute. By the terms of Rule 45 Miss Friedeck, as the incumbent of Check Clerk Job No. 101, was guaranteed the right to work that job 6 days in the week of August 20th, 1945, a week in which no holidays occurred.

Miss Friedeck was wrongfully assigned Friday as her regular day off duty as if she were "necessary to the continuous operation of the Carrier" The Employees contended, and the Carrier now agrees, that Miss Friedeck and "regularly assigned to such service" within the meaning of Article VII.

of the Third Division, National Railroad Adjustment Board, in the Award 386 and many others, no payments were made for time lost on days other than Sundays when the incumbents performed no service on such days. It is further shown that the incumbent of position No. 101, Miss Odette Cohee, worked Saturday, August 18, and Sunday, August 19, 1945, the first two days of the six-day week beginning Saturday, August 18, 1945, following her regular off-duty day of Friday, August 17, 1945, and that she was paid time and one-half rates in the settlement of her claim for Sunday, August 19, 1945; that Miss Cohee voluntarily elected to move up on Monday, August 20, 1945, to a more desirable position during the vacation absence of the incumbent of position No. 24, OS&D Clerk; that because Miss Cohee moved up vacating her position for the last four days of the week which began August 18, 1945, it was necessary to fill that position by the use of a furloughed or extra Clerk and that Miss Alice Friedeck, who held no regular assignment and was in no manner regularly assigned to position No. 101, was used in the absence of Miss Cohee to work the four remaining days of the August 18, 1945, week on position No. 101. Position No. 101 was assigned a regular off-duty day of Friday, therefore, that position was filled on Friday, August 24, 1945, by the incumbent of the relief position which had been established by bulletin No. 636. There was absolutely no violation of the Agreement, all contentions that there had been a violation of the Agreement were paid for by the settlement made in the claims of Miss Odette Cohee for position No. 101 and the Carrier is not due to assume double penalties for the same position and assignment. The settlement in favor of Miss Odette Cohee was in full and total settlement of all irregularities and rule violations by the assignment of a regular off-duty day other than Sunday to position No. 101 and a correction was made by the Carrier through the issuance of bulletin No. 647 which assigned position No. 101 to work Monday to Saturday inclusive, with Sunday as a regular off-duty day, effective after the close of business August 25, 1946.

OPINION OF BOARD: Prior to June 16, 1945, the Check Clerk assigned to position No. 101, was assigned to work seven days each week at the straight time rate for Sunday and holiday work under then existing rules. On June 16, 1945, the rule was superseded by the standard Sunday and holiday rule. From this date until August 25, 1945, the rule was improperly applied by assigning six days work with a rest day other than Sunday when the position was not one necessary to the continuous operation of the railroad. The Carrier paid claims for time and one-half for Sundays worked during this period. The Organization contends that Claimant who was temporarily assigned to the position was entitled to be paid an extra day under the rule guaranteeing an employee six days work each week.

Position No. 101 was regularly assigned to Miss Cohee seven days per week on the theory that the position was necessary to the continuous operation of the railroad. On July 28, 1945, to meet the requirements of the new agreement, Miss Cohee was assigned the position with Friday as her day of rest. A relief clerk was assigned to work Miss Cohee's rest day and the rest days of five other clerks each week. The Organization protested this bulletining of these positions on the theory that all should have been bulletined with Sunday as the rest day of each, the positions not being necessary to the continuous operation of the railroad. The Carrier thereupon rebulletined the six positions, including position No. 101, with Sunday as the rest day of each and abolished the relief position, all effective as of the close of business on August 25, 1945.

Miss Cohee worked her position up to and including Sunday, August 19, 1945. She then worked a higher rated position temporarily and Claimant an extra clerk, was assigned temporarily to Miss Cohee's position. Claimant worked August 20, 21, 22, 23 and 25, 1945, August 24th being Claimant's assigned rest day and a part of the relief clerk's assignment. The Organization contends that Claimant is entitled to pay for August 24th under the rule guaranteeing six days work per week.

The weakness of the claim is that claimant only worked a part of her weekly assignment. Assuming that claimant's work week was the six days

immediately preceding her rest day, Miss Cohee worked the first two days of the assignment and Claimant the next four. While it is true that an improper assignment was made, the penalty for assigning a week day as the day of rest when Sunday is required, is the payment of the time and one-half rate for the Sunday work. This, the Carrier has acknowledged and paid. This, however, is foreign to the rule guaranteeing a six-day work week.

The rule guaranteeing six days work each week means that an employe assigned to a position will be guaranteed six days work in each seven days, but the rule contemplates that the assigned employe will be available for the whole week. If an extra, furloughed or lower rated employe works a portion of the week, the work performed by all employes properly used on the position during the week must be tacked in determining if the rule guaranteeing six days work has been violated. In the present case, the employe assigned to the position (Miss Cohee) was assigned six days work per week with Friday as her day of rest. Claimant worked four days and Miss Cohee worked two days, and they having jointly worked six days, there was no violation of the six-day guarantee rule.

If the week be deemed to have commenced on Monday, August 20th, 1945, claimant failed to work a full week because of a rebulletining of the work in accordance with the controlling Agreement. In other words, the position was properly rebulletined before she worked her full week. This does not bring the six-day a week guarantee into operation. The difficulty here grows out of the fact that Claimant did not work, nor was she available for a full week within the meaning of the term and consequently the guarantee of a six-day work week does not apply to her under the conditions shown. Instead of losing Friday's work, she simply did not complete the assigned six days in that week. The only violation of the Agreement which occurred was the assignment of Friday rather than Sunday as the day of rest and the payment of time and one-half for the Sundays worked meets the penalties stipulated for such a breach.

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 Agreement was not violated by the Carrier as charged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 11th day of April, 1947.