Award No. 4020
Docket No. CL-3923

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement:

(1) When it failed to Call Mr. George Eno, a clerk in the Bureau of Information under the supervision of the Stationmaster, on his assigned day of rest, Friday, February 14, 1947 when vacancy occurred by reason of the relief clerk reporting ill and Carrier assigned the work to Mr. Francis Chamberlain, Assistant Stationmaster, (excepted position).

(2) That Mr. George Eno be allowed time and one-half for eight hours because of this violation.

EMPLOYES' STATEMENT OF FACTS: Under date of February 14, 1947, Elizabeth Boyd, relief clerk in the Information Bureau, reported ill and the Carrier had sufficient time to call and assign Mr. George Eno, the incumbent of the position who was available, even though enjoying his assigned day of rest. The Carrier failed to call Mr. Eno and assigned Mr. Francis Chamberlain, holder of an excepted position as Assistant Stationmaster to fill the position.

Claim was filed by Mr. H. A. Ferguson, Local Chairman, with Mr. R. F. O'Neill, Stationmaster, for one day's pay at time and one-half for Mr. Eno. Copy of this claim is attached as Employe's Exhibit "A."

This claim was allowed in the next pay check of Mr. Eno, but on March 7, 1947 Mr. O'Neill wrote Mr. Ferguson advising he had allowed same in error, and instead was allowing time and one-half for the Sunday worked in that same week, and consequently, a day's pay was deducted from Mr. Eno's pay check. Copy of this letter is attached as Employe's Exhibit "B."

Mr. Ferguson then requested that the General Chairman handle the claim to a conclusion and letter was written to Mr. Miller, Superintendent, under date of March 17, 1947, which is attached as Employe's Exhibit "C."

Mr. Miller's reply to March 18, 1947 is attached as Employe's Exhibit "D."

As Employe's Exhibit "E," we are attaching copy of Mr. Wicks letter of April 24, 1945, as referred to by Mr. Miller in his letter.

Our reply to Mr. Wicks' letter of April 24, 1945 dated May 9, 1945 is attached as Employe's Exhibit "F."

The employes have cited several other awards as supporting the position which will be discussed in the following paragraphs.

Awards 2282 and 3507 are not analogous to the instant one because seven day positions were not involved in those awards and the question of filling such positions on relief days, the point at issue in this case, could not possibly have been involved.

Award 2467 was predicated or an added paragraph to the standard Sunday and holiday rule in the agreement involved but which does not appear in similar rule in our agreement. The fact that this Award could have no bearing on the present controversy is clearly pointed out in the last paragraph of the Opinion of Board reading:

> "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."

Awards 3191 and 3504, as stated in our letter to the General Chairman June 21, 1947, quoted above, covered cases on the same property and under the same agreement. However, that agreement was fundamentally different than ours in that it, by rule, excluded excepted positions from all provisions of the agreement while ours specifically includes such positions in Rules 1, (scope), 4(d) and 14 (and 24 and 25 in event of complete separation from the service). The carrier in Awards 3191 and 3504 contended that although the excepted position was listed in the exclusionary rule, it was covered by the scope rule and the occupant could perform clerical work. The Board held that had it not been for the exclusionary effect of the rule referred to, their contention would have undoubtedly been upheld. With just the opposite being true of our agreement, excepted positions are specifically included in the Scope Rule, the only conclusion that can be drawn is that Awards 3191 and 3504 support the position of the carrier rather than that of the employes.

In support of our position, we invite attention to Award 3458 in which the employes contended that the Manager of a Zone Reservation Bureau, an excepted position, could not do routine clerical work. The particulars in that case were very similar to the instant one as the Manager was included in the scope of the agreement but excepted from the provisions of certain rules just as is the Assistant Stationmaster in our case. The clerks in the Train Information Bureau are under the jurisdiction of the Stationmaster or the Assistant Stationmaster in his absence. Part of the duties of the Assistant Stationmasters prior to and continuing since the establishment of the Train Information Bureau is the same as that of the clerks in the Bureau, that is the furnishing of information to the public when requested. Thus it is readily apparent that the Manager of the Bureau and the Assistant Stationmaster have the same relative status and inasmuch as the claim of employes was denied in Award 3458, a like decision should be in order in this case.

We have shown that the claim presented by the employes is not supported either by the rules of the agreement nor by Awards which they have cited. To the contrary, Award 3458 covering a case in which the particulars were practically identical with the instant one denied the claim of the employes. For these reasons the claim is without merit and should be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: Claimant is a Clerk in the Bureau of Information at Union Station in St. Louis, a seven-day position, with Friday as his assigned day of rest. On Friday, February 14, 1947 the regularly assigned relief clerk in the Information Bureau reported sick. There were no extra or furloughed employes so Carrier used an Assistant Stationmaster to work Claimant's position on that date. Claimant contends that he should have been called to work his position on an overtime basis.

Assistant Stationmasters formerly were excepted positions. However, by the Agreement effective April 1, 1945 they were expressly included in the

scope rule. But they are thereafter excepted from the application of all but five rules of the Agreement. One of the five rules which cover Assistant Stationmasters is the scope rule so that such positions are first designated by title in the scope rule and then in the excepting clause the scope rule (Rule 1) is stated to be applicable to such positions as follows:

> "(b) Only Rules 1, 4(d) and 14 (and 24 and 25 in event of complete separation from the service:) are applicable to the following positions:"

Thus these positions are fastened twice to the scope rule, and there is no room for argument that the Carrier in assigning the Assistant Stationmaster to do the work on this occasion removed the work from the scope of the Agreement.

Since Assistant Stationmasters are excepted from the application of the "money rules" Claimant contends that the use of such an employe on the occasion in question amounted to blanking the position which may not be done under the Sunday and Holiday Rule. However, we do not have sufficient evidence in this case that the interpretation sought for by Claimant has been established by custom and practice, or that it is implied in the proper construction of the Sunday and Holiday Rule.

Accordingly, on the basis of the record before us the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.