

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 Employees, that the Carrier violated the Clerks' Agreement:

(a) When it required Mr. Michael F. Kramer to suspend work on his regular assignment as Yard Clerk, Wabash Connection, East St. Louis, Illinois, and work the Dupo Train Position on June 30th and the CB&Q position on July 1st, 1947 and subsequent dates, and

(b) That clerk Kramer be paid the rate of his regular position each day withheld from his position in addition to the amount paid for working other positions June 30th and July 1st, 1947 and subsequent dates.

EMPLOYEES' STATEMENT OF FACTS: One Yard Clerk position is regularly assigned to each shift at points commonly known and referred to as Dupo Train Job, C.B.&Q. job and Wabash Connection, the assigned hours, regular assigned incumbents, rate of pay and assigned rest day being as follows:

Yard Clerk Dupo Trains No. 2 Yard—Title of position.

Working hours	Incumbent	Rate	Relief Day
7:00 A.M. to 3:00 P.M.	G. M. Hennessy	\$8.95	Monday
3:00 P.M. to 11:— P.M.	J. M. Hanna	8.95	Tuesday
11:00 P.M. to 7:00 A.M.	C. E. Jessup	8.95	Friday
Yard Clerk	CB&Q Connection	Title of Position	
7:00 A.M. to 3:00 P.M.	W. A. Perrin	8.85	Thursday
3:00 P.M. to 11:00 P.M.	C. L. Shadley	8.95	Sunday
11:00 P.M. to 7:00 A.M.	R. S. Michaels	8.95	Tuesday
Yard Clerk	Wabash Connection	Title of Position	
7:00 A.M. to 3:00 P.M.	M. F. Kramer	8.95	Saturday
3:00 P.M. to 11:00 P.M.	A. J. Foran	8.95	Thursday
11:00 P.M. to 7:00 A.M.	T. Gonstal	8.95	Monday

On December 31, 1946 the carrier issued Bulletin No. 71 in Seniority District No. 34 advertising the first trick Wabash job position as vacancy, said position being bid for and assigned to Clerk M. F. Kramer by carrier's bulletin No. 1 issued January 6, 1947. Copy of these bulletins are attached as Employee's Exhibits "A" and "B".

assignments other than their own and the basis for payment when it is done. When a rule in an agreement provides the method of paying for a certain type of work it certainly authorizes such work to be done, otherwise the rule would be without value and of no purpose. That interpretation has never been contested but to the contrary is supported by testimony of Vice President Lyons, of the organization, in his testimony before the Arbitration Board in the Union Terminal case at Dallas, Texas, Volume 2, December 17, 1946, from which the following is quoted:

"It is a very well established principle of the contract, as I understand it, when you provide in the contract for a certain payment that you are authorizing such work."

In other words, if there was no reference to the shifting of forces in Rules 10 and 17 it would still be permitted under Rule 48.

The General Chairman in his letter of August 18, 1947, Exhibit C, states in part: "It is definite that there is no relief man assigned to the Dupo Train position on the regular incumbent's assigned day of rest, on Monday; and therefore, the Carrier should provide and make arrangements to have someone available to fill this position without the necessity of taking regular assigned clerks off their assignments to fill the vacancy." The reason that no relief man is assigned to relieve the position in question is that all full-time positions, including relief assignments, must be worked six days per week (see Rule 45), and that there is no extra work regularly available so that the three days' relief can be covered by a part-time relief position. However, extra men were available on each of the dates for which claim is made but due to inexperience they were unable to fulfill the duties of the vacant position. The arrangement made had a twofold purpose, first to protect the requirements of the service and second to permit the extra man to work. The effect was certainly not to absorb overtime as the organization alleges, because no positions were blanked and the starting time or rate of pay of any position is not involved.

The management has certain obligations to its employees, which are recognized, but on the other hand, the management and the employees have joint obligations to the public which cannot be evaded. The management cannot properly serve the public without the help of the employees and cannot permit key positions to go unfilled to the discomfiture of the public simply because the employees might not want to be moved off their regular positions. The employees demand all the work under the scope rule in the agreement and the management has the right to expect that they will protect that work, including the temporary vacancies. It was that expediency that prompted the inclusion of those portions of Rules 10, 17 and 48, referred to, in the contract of April 1, 1945, in connection with which the organization insisted on the right of the men to move up to the better wages and better hours available when temporary vacancies occurred, but they now want to limit that privilege to the personal whims of individual employees regardless of the necessity of filling a given position and the effect that failure to fill such a position would have on the needs of the public.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Michael F. Kramer is a Yard Clerk regularly assigned to a position known as Wabash Connection, hours 7:00 A. M. to 3:00 P. M. with relief day Saturday. On June 30, July 1 and 7, 1947, he was required to work other positions with the same hours and same rate of pay as his own assignment, those days being the regular relief days of the other positions and there being no available qualified extra clerks to fill said positions, apparently because of extra clerks filling positions whose incumbents were on vacation. Employees file claim as indicated above.

The right to perform work on the position of Yard Clerk, Wabash Connection, with hours from 7:00 A. M. to 3:00 P. M. was obtained by claimant as the senior employee entitled thereto under the seniority provisions of the Agreement. To permit the shifting of said employee from that position to

another at the unlimited discretion of the Carrier, even though the hours of the other position are the same, is destructive of the intent and purposes of seniority and bulletining rules.

Carrier advances four contentions justifying its shifting of Mr. Kramer from his regular assignment: (1) That it was permissible under Rule 10 of the Agreement covering short vacancies since Section (c) thereof provides for shifting of forces. That portion of Rule 10 further provides that Heads of Departments and Local Committees will handle in a manner that will cause the least disturbance in the office or department. There is no evidence that such handling was had. Hence we reject that contention. (2) That it was permissible under the following quoted provision of Rule 17:

"Furloughed employees when available shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces."

We fail to see merit in this contention for it seems patent that the rearrangement of regular forces referred to therein would have to have been consummated in accordance with the restrictions contained in Rule 10. (3) That it was permissible under Rule 48 (the Preservation of Rate Rule). That contention has been advanced before and previous Awards of this Board have rejected it, said Awards holding that such a rule is purely a rating provision and not one which permits the shifting of an employee from his regular assignment. (4) That it was permissible under a local understanding with respect to shifting of forces to fill vacation vacancies. In this connection we quote from a letter of Carrier's Director of Personnel to the General Chairman dated October 11, 1945:

"It is understood, of course, that regularly assigned men can be used off their regular jobs temporarily when extra men are not capable of filling the position of the man on vacation. (Emphasis supplied.)

Neither of the incumbents of the other positions which Mr. Kramer filled were on vacation and extra men were qualified to fill the vacancies of the men on vacation. That contention also fails.

It was said in Award 2695 that regular assignments should not be disturbed except as a last recourse. There was a recourse here,—the occupants of the other positions could have been called in to work their assignments on their relief days.

Award 2695 involved the same parties as the current docket. There it was held that it was necessary to give effect to Rule 48 (now 41) of the Agreement providing that "Employees will not be required to suspend work during regular hours to absorb overtime." The effect of the suspension of work on Mr. Kramer's position during regular hours was to prevent the payment of overtime to the regular occupants of those positions on their relief days. The factor of the hours of the other assignments being identical with those of claimant on the days in question does not make it any the less a violation of the rule, if the actual result was to absorb the payment of overtime on the other positions (see Award 3417).

Carrier has taken the position that the only claims that the Board may consider are those for June 30, July 1 and 7, 1947, since they were the only claims considered on the property and reference to claims on subsequent dates was not made until the decision of the Superintendent on claims for the three days above mentioned was appealed to the Director of Personnel. It is obvious that we cannot sustain the claim as submitted for it is the circumstances under which the other positions were worked on the three days in question which form the basis for a sustaining Award. It is further obvious in view of the position taken by the Superintendent of Claims with respect to the claim for June 30, July 1 and 7, 1947, further discussion of claims on behalf of Mr. Kramer arising on subsequent dates under the same circumstances would have been futile. Accordingly, our Award will be to sustain

the claim for June 30, July 1 and 7, 1947 and subsequent dates where Mr. Kramer was required to work other positions under circumstances identical with those which prevailed on June 30, July 1 and 7, 1947. If the parties are unable to agree with respect to whether or not the circumstances were identical on the subsequent dates, they may refer the matter back to this Board as to that issue.

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.

AWARD

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.