

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Charles S. Connell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE PENNSYLVANIA RAILROAD COMPANY**

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

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, particularly Rules 4-A-6 and 4-C-1, also Section 12(a) of the Vacation Agreement of December 17, 1941, when it used Clerk Edward Goshen to relieve the incumbent of Clerical Position FH-7-F on October 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31; and November 1 and 2, 1946, due to incumbent of this position being on vacation.

(b) The claimant, Edward Goshen be compensated at pro rata rate of pay for all hours held off his regular assigned tour of duty as a result thereof, and be paid punitive rate of pay for all hours worked outside his regular assignment for the period of this claim. (Docket W-460)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimant holds a position and the Pennsylvania Railroad—hereinafter referred to as the Brotherhood and Carrier respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of the Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimant is regularly assigned to Clerical Position, Symbol FH-10-F, in the Freight Agent's Office at Terre Haute, Indiana, St. Louis Division. The regular assigned working hours of this position are 7:00 A.M. to 11:00 A.M. and 12 Noon to 4:00 P.M., daily except Sunday and Holidays. The rate of this position was \$230.70 per month.

During the period October 21, 1946, to November 2, 1946, a total of twelve days, the incumbent of Clerical Position, Symbol FH-7-F, tour of duty 1:30 P.M. to 10:00 P.M., exclusive of thirty minute meal period, in the Freight Agent's Office at Terre Haute, Indiana, was absent from duty account of vacation. During this period the claimant was arbitrarily removed from his

The Carrier submits, therefore, that under the Rules Agreement, the Claimant is not entitled to the compensation requested.

Another contention of the General Chairman was that it was not proper to set aside the provisions of the Rules Agreement in order to apply the Vacation Agreement.

The Carrier wishes to point out that the Employees are a party to the Vacation Agreement and are definitely obligated to abide by the provisions of that Agreement as well as the interpretations thereto. It certainly was not the intent of the Vacation Agreement that the Carrier would be penalized under the Schedule Agreement in the granting of vacations. This is evidenced by Article 12(a) of the Vacation Agreement, wherein it is provided that the Carrier "shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor." The Carrier cannot, therefore, agree with the Employees that in circumstances such as are involved herein, the Schedule Agreement is controlling, but submits, on the other hand that, the restriction embodied in the Vacation Agreement contrary to the use of the vacation program to create unnecessary expense takes precedence over the rule of the Schedule Agreement which would create such expense.

The General Chairman also contended that Article 12(b) of the Vacation Agreement supported the claim herein.

As has been set forth in the Statement of Facts and elsewhere in the Submission, the Claimant was the only available qualified employee to be assigned to the position of the vacationing employee. The Carrier had no choice other than to use the Claimant on the position if the regular incumbent were to be permitted to be absent on vacation.

The Carrier submits that the contention of the General Chairman is without merit and does not lend support to the claim in this case.

The Carrier has established that in view of the explicit provisions of the National Vacation Agreement and interpretations thereof, the Rules Agreement has not been violated and the Claimant is not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employee in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Edward Goshen, is the regular incumbent of clerical position FH-10-F in the Freight Agent's office at Terre Haute, Indiana, with working hours 7 a.m. to 11 a.m. and 12 noon to 4 p.m. daily except Sundays and holidays. His rate of pay is \$230.70 per month. During the period October 21, 1946, to November 2, 1946, inclusive, the Claimant was required to work position FH-7-F, while the incumbent of that position was on vacation. The hours of that position are 1:30 p.m. to 5 p.m. and 5:30 p.m. to 10:00 p.m. daily except Sundays and holidays, and the rate of pay is \$245.70 per month which rate was paid Claimant during the period in question.

The principal question in this case is whether the Carrier violated the Agreement, principally Rules 2-A-1, 3-C-1 and 4-C-1 in suspending Claimant from his regular work and assignment on the days in question, to absorb overtime of any employee covered by this Agreement, or was it done with that result or effect. The Joint Statement of Agreed Upon Facts states that the Claimant was required to work position FH-7-F while the incumbent of that position was on vacation. He did not resign from his regular position FH-10-F, it was not abolished and he did not desire or ask for the change on the days in question. This Board must apply the rules of the Agreement in their application to the particular factual situation involved. The Claimant had the right to work his regular position. He could not properly be required to suspend that work in order to work on another position except in an emergency, and no emergency existed in this case. The action of the Carrier here complained

of constituted a suspension of work to absorb overtime, and was a violation of the Agreement. See Awards 4075, 4352, 4499 and 4500.

The Carrier contends that its action was justified under the National Vacation Agreement. This Board has consistently held that in an instance where there is a conflict between the Vacation Agreement and the Rules Agreement, the terms and conditions of the Rules Agreement control, until such time as that Agreement is modified or changed by the parties thereto. The record shows that the Agreement has not been so modified and Claim (a) must be sustained.

In Claim (b) the Claimant seeks compensation at the pro rata rate of pay for all hours held off his regular assignment, which will be allowed. He further seeks compensation at the punitive rate of pay for all hours worked outside his regular assignment, for which he has been paid at the pro rata rate. This must be denied for we concur with the awards of this Board which have consistently held that penalty awards as in this case shall be at the pro rata rate of pay.

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 Carrier has violated the Agreement.

AWARD

Claim (a) sustained; Claim (b) sustained as to pro rata rate and denied as to punitive rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.