

Award No. 4717
Docket No. CL-4720

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) By refusing to permit Herman W. Banks to work on the position of Clerk, Steelton Station, Duluth, Minnesota, on April 5th, 1948, and that

(2) Clerk Herman W. Banks shall now be compensated for the loss incurred by reason of the violation, in the amount of eight hours' pay at the going rate of his position at Steelton Station on April 5, 1948.

EMPLOYEES' STATEMENT OF FACTS: Mr. Banks is a regularly assigned Weightmaster at the ore scales in Proctor, Minnesota. During the Winter months his position of Weighmaster is abolished, as there is practically no movement of iron ore during the Winter months. During the slack season employees on seasonal positions are permitted on their seniority to displace junior employees.

During the Winter of 1947-1948 Mr. Banks exercised his seniority over a junior employee and occupied the position of Clerk at Steelton Station. On April 3rd, 1948 he was notified to report at the ore scales at Proctor, Minnesota at 7:00 A.M. April 6th, on his regular assignment of Weighmaster. Sunday, April 4th was his regularly assigned day of rest on the position of Clerk at Steelton. On Monday, April 5th, he reported for work on his position as Clerk of Steelton. Under instructions from the Agent he was not permitted to work on April 5th, and a junior employee occupied his position, thus causing Mr. Banks to suffer the loss of eight hours pay at the rate of his position of Clerk, Steelton Station.

Agreement effective January 15th, 1947, between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 13 of the current working agreement between the Carrier and the Brotherhood provides as follows:

"RULE 13

Reducing and Increasing Forces

(a) When reducing forces seniority rights shall govern. Proposed reduction in force or abolishment of positions shall be bulletined at

assigned weighmaster at Proctor. As such he requested and was assigned to the day shift.

The summer relief schedule for the weighmasters at Proctor provided Monday as the day off for the day shift. Therefore, Mr. Banks who had requested the day shift received his day off on Monday, April 5, 1948. In other words, his regular assignment throughout the summer was Tuesday through Sunday with Monday his day of rest.

Thus by a schedule coincidence, Mr. Banks received two consecutive days off, the last day of the week on his winter position and the first day of the week on his summer position. Mr. Banks protested this arrangement stating he should have been allowed to remain on his winter position until the day he started work on his summer position.

The Carrier takes the position that Mr. Banks' working schedule was proper under the rules for the following specific reasons:

(1) Mr. Banks worked six days during the final week of his winter position. He also worked six days during the first week of his summer position.

(2) Mr. Banks worked a total of twenty-six days during the month of April. These two points prove that no time was lost because of schedule or position changes as there were twenty-six working days in the month.

(3) When Mr. Banks was assigned to the weighmaster's position effective Monday, April 5, 1948, his winter position was open to assignment to another employee. Failure of the Carrier to assign an employee to this vacated position might easily have been construed as a violation of the rules and a claim presented accordingly.

(4) If the Carrier allowed Mr. Banks to work on his winter position after he was assigned to his summer position, he would in effect be occupying two positions on the same day.

In view of these circumstances, the claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant Banks is a regularly assigned Weighmaster at Proctor, Minnesota. That is a seasonal position which is abolished during the winter months. During the winter of 1947-48 Claimant occupied a six-day position as Clerk at Steelton Station, with Sunday off. April 3, 1948, he was instructed to report on his regular assignment of Weighmaster on Tuesday, April 6. He reported for duty on the Clerk's position on Monday, April 5, but was not permitted to work. Work on the Steelton Clerk's position on Monday was given to an employee junior to Claimant. Employees claim a violation of the seniority rule and the rule providing that nothing in the Agreement shall be construed to permit reduction of work days below six per week. Carrier asserts that Claimant was afforded six days' work in the week preceding his assignment to the Weighmaster position and was also afforded six days' work in the first week of work on the Weighmaster position.

We believe the crux of this dispute is the determination of when Claimant's assignment to the Weighmaster position should be considered as effective. Obviously, if the assignment was not effective until April 6, 1948, as the senior employee available for service he would be entitled to work on the Steelton clerical position on Monday, April 5. The Weighmaster position was a seven-day position necessary to the continuous operation of the Carrier, with Monday as the assigned relief day. A regularly assigned relief position was established for the purpose of affording relief to the occupant of the aforesaid position. Hence, the right to work the Weighmaster position on that day was not the Claimant's but belonged to the occupant of the relief position. In that respect, it was not a part of Claimant's regular assignment as Weighmaster. It follows, therefore, that he was not filling a regular assignment as Weighmaster

on Monday and his assignment to that position could not be considered to be effective until Tuesday. Having seniority rights to work on the Clerk's position on Monday and being available, he should have been permitted to work said position on that day. It follows that a sustaining award is in order.

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 Employee involved in this dispute are respectively carrier and employee 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.