# Award No. 5066
# Docket No. CL-5041

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Jay S. Parker, Referee**

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## 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 Carrier violated the Clerks' Agreement:

(1) When at 2:00 P.M. June 14, 1949 the Carrier Agent in Seniority District No. 38 notified Yard Clerk John N. Crnkovich that his day of rest was changed from Sunday to Thursday, and he would have to take off on Thursday, June 16, 1949, after having been off on his regular assigned day of rest, Sunday, June 12, 1949, depriving Yard Clerk Crnkovich of a day's pay, and

(2) That Yard Clerk Crnkovich be compensated for the day's pay as a result of this violative action.

EMPLOYES' STATEMENT OF FACTS: Yard Clerk Crnkovich was assigned to position at Madison Yards N.E.E.B. as Yard Clerk helper with Sunday as the assigned day of rest. After having been off on his assigned day of rest, Sunday, June 12, 1949, he was notified on Tuesday, June 14, 1949 at 2:00 P.M. by Agent G. E. Greendorner that his day of rest was changed to Thursday and forced him to take off on Thursday, June 16, 1949, which resulted in his being compensated only five days in the work week, and then worked Yard Clerk J. C. Benne off his regular assignment on the position of Mr. Crnkovich on Thursday, June 16, 1949.

Yard Clerk Crnkovich filed claim for a day's pay on June 17, 1949 as reproduced herewith:

"Madison Yards
June 17, 1949.

G. E. Greendorner, Agent

Please accept this as a time claim for Thursday June 16, 1949. Rate of pay $10.19 N.E.E.Bd. Helper.

Because J. C. Benne worked off his regular assignment and forced me to take a day off.

/s/ John N. Crnkovich

Copy to
General Chairman
E. Schmidt."

of our letter of November 26, 1947 to General Chairman Schmidt as Exhibit A-1; Mr. Schmidt's acknowledgement of December 11, accepting all of its provisions with the exception of Item 5, as Exhibit A-2; the letter of December 22, 1947 to Department Heads with copy to Mr. Schmidt, as Exhibit A-3; and Mr. Schmidt's acknowledgement of December 31, 1947, again accepting all its provisions with the exception of Item 5, as Exhibit A-4. The Memorandum Agreement, Exhibit A-3, confirms the generally recognized interpretation of Rule 44 that relief days apply to positions and not to employes.

All promotions, assignments and displacements under the contract of April 1, 1945 are based on seniority, provided applicants have sufficient fitness and ability (see Rule 7) and all new positions and vacancies must be bulletined for the seniority choice of employes (see Rule 11). This choice on a seniority basis coincides with the provisions of Rule 16, previously referred to, which provides that if "the assigned day of rest is changed, the employes affected may, within ten (10) days thereafter, upon twenty-four (24) hours' advance notice, exercise their seniority rights to any position held by a junior employe." In other words, employes holding such jobs have the choice under the exercise of their seniority rights of remaining on the job with the changed day of rest or of displacing some junior employe.

**POSITION OF CARRIER:** All jobs under the contract of April 1, 1945 are subject to the exercise of seniority, except insofar as fitness and ability are concerned, and every job occupied is incident to the exercise of seniority. In other words, and employe can choose his relief days without restrictions on the part of the management except as to fitness and ability to do the work, and when an employe exercises seniority on any job he is guaranteed a six-day workweek on that job under Rule 45 of the contract. That guarantee is applicable to the employe on the job that he prefers in the exercise of his seniority but inasmuch as the days of rest apply to the position and not to the employe, the guarantee cannot be stretched to cover changes in jobs brought about by the exercise of seniority. An employe cannot expect to carry his six-day guarantee under Rule 45 with him every time he changes jobs. That guarantee is applicable only to his work on any given job.

A clear statement of the application of Rules 16 and 44 is given in our communication of March 26, 1945 to Department Heads regarding the application of the new rules of the contract of April 1, 1945, a copy of which was sent to General Chairman Schmidt without any protest ever having been made by him as to its provisions. It is quoted:

"Rule 16

"Changing Assigned Starting Time

> "Note that any change in the day of rest entitles the occupant of a position to a bump; however, there continues to be no restriction on us as to the assigning of days of rest, except that of giving Sunday when possible as provided in Rule 44. Days of rest must, of course, be shown in bulletins advertising positions."

All of the rules of an agreement must be construed in conjunction with one another in arriving at the intent of the parties, and that is why it is not proper to consider the orginization's claim on basis of Rule 45 alone when there are so many others having a bearing. It is clear from the rules that the agreement between the parties never contemplated application of the six-day guarantee in connection with changes brought about by the application of seniority rights.

Copies of our letters of August 25 and November 10, 1949 to General Chairman Schmidt are attached as Exhibits B-1 and B-2.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Yard Clerk Crnkovich was assigned to a continous service position in the Carrier's yards with Sunday as his assigned

day of rest. The work week of his position started on Monday and ended on Saturday. On Tuesday, June 14, 1949, Agent Greendorner, who was claimant's supervisor, notified him that his rest day was changed from Sunday to Thursday and that he would have to take Thursday, June 16, off. Claimant had already been off the preceding Sunday with the result that after taking Tursday off as required by the Carrier he worked but five days in that week, in which it is conceded there was no holiday.

The Brotherhood contends the Carrier's action in requiring Crnkovich to take off two days in such week and in giving him but five days' work therein was in violation of that part of Rule 45, commonly known as the six-day per week guarantee rule, which reads:

> "Nothing in this agreement shall be construed to permit the reduction of work days below six (6) per week, except that this number may be reduced in a week in which one of the seven holidays specified in Rule 44 occurs to the extent of such holiday."

We think the above quoted portion of Rule 45 is so clear and unambiguous that it is susceptible of but one interpretation. That, with facts and circumstances such as have been heretofore related, is that Yard Clerk Crnkovich was entitled to six day's work during the work week commencing June 13 and ending on June 18. By the Carrier's action in changing his rest day and not permittiing him to work on Thursday, June 16, he was allowed but five. Therefore the rule was violated and he is entitled to be compensated for the day's work which the Carrier caused him to lose at the daily rate of the position.

The conclusion just announced needs no citation of precedents to support it. Even so, if desired, they are available. Like conclusions were announced by this Division of the Board in Awards 3923 to 3927 inclusive, and in Awards 4522, 4523 and 4539, wherein similar if not almost identical controversies were involved.

In conclusion it should perhaps be stated that Award 1814 and 1815 cited and relied on by the Carrier as authority to the contrary have been examined and found to have no application under the existing facts and circumstances. The collective Agreement on which the claimants in those cases based their rights of recovery contained no six-day per week work guarantee such as is to be found in Rule 45 of the contract here involved.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1950.