Award No. 5067
Docket No. CL-5058

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violated the Clerks' Agreement when it failed to properly compensate Mrs. Alice M. Oman for service performed on Sunday, September 12, 1948, her day of rest; and,

(b) Mrs. Alice M. Oman shall now be paid the difference between time and one-half and straight time she was allowed for service performed on Sunday, September 12, 1948, her regular assigned day of rest.

EMPLOYES' STATEMENT OF FACTS: Mrs. Alice M. Oman is the regular occupant of PBX Operator Position No. 343 in the Eastern Lines Relay and PBX Office, Topeka, Kansas, hours 8:30 A.M. to 5:00 P.M., six days per week, Monday through Saturday, with Sundays off. On Sunday, September 12, 1948, Relief Position No. 325, which position is assigned to protect PBX Operator Position No. 37, hours 8:00 A.M. to 4:00 P.M. on Sundays, was vacant for that one day. Carrier instructed Mrs. Oman to work this one day vacancy on her day of rest for which she was compensated at pro rata rate.

Under provisions of Section 10-a, Mrs. Oman, as well as a few other regular assigned employes, had on file with the local Manager a blanket application to protect extra work in circumstances wherein off-in-force-reduction employes were not available.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date October 1, 1942, in which the following rules appear:

"ARTICLE III

"Section 10-a. Vacancies of fifteen (15) calendar days or less duration shall be considered temporary and, if to be filled, shall be filled (1) by recalling the senior qualified and available off-in-force-reduction employe not then protecting some other vacancy; (2) if there is no such off-in-force-reduction employe available, by advancing a qualified employe in service at the point who makes application therefor. If neither of these alternatives produces an occupant for

As to the General Chairman's reference to the letter-agreement of April 15, 1943, a copy of that letter is attached hereto as Carrier's Exhibit "A," a careful analysis of that document will plainly show that it lends no support whatever to the Employes' claim in this dispute.

The letter agreement of April 15, 1943 was, as indicated in the first paragraph thereof, primarily intended to correct certain inequities which had resulted from a former understanding wherein it had been agreed that the assignment of rest days to a position necessary to the continuous operation of the Carrier and the relief of the incumbents of such positions on their assigned rest days pursuant the terms of Article VIII would not constitute a change in the position from a seven to a six-day position within the meaning of Article VI, Section 6-b, the provisions of which had been waived with the understanding that the then present incumbents would be required to remain thereon. The parties also agreed to further understandings in the April 15, 1943 letter of agreement which served to (1) specify the conditions under which an employe necessary to the continuous operation of the Carrier could exercise displacement rights and (2) clarify certain differences of opinion then existing with respect to the requirements of Article VIII. The letter of agreement specifically recognized and provided that the Carrier **would, wherever possible, establish regularly assigned relief positions to relieve employes necessary to the continuous operation of the Carrier on their assigned rest days.** It also provides in Item 4 thereof that when rest day relief could not be provided by assigned rest day relief employes, the Company had the right to use so-called extra or off-in-force-reduction employes when available to provide relief on assigned rest days.

There is nothing whatever in the letter agreement of April 15, 1943 which spells out how the temporary vacancy on rest day relief Position No. 325 should have been filled. The Employes can point to nothing in the letter agreement which takes precedence over Article III, Section 10-a, of the current Clerks' Agreement in the filling of a temporary vacancy of the nature involved in this dispute. The General Chairman's reference to the April 15, 1943 letter is undoubtedly advanced with the intention of contending that Mrs. Oman was not a regular assigned rest day relief employe. Such a contention cannot, of course, be supported by the facts and circumstances involved in this dispute. **Mrs. Oman obtained assignment to the rest day relief Position No. 325 in accordance with her rights under the agreement rules, and was just as much a regular assigned rest day relief employe within the meaning and intent of the letter-agreement of April 15, 1943 as was Miss Strange, the regular incumbent of the rest day relief position.**

In conclusion, the Carrier reasserts that the Employes' claim in this dispute is not supported by any rule of the current Clerks' Agreement and should be denied for the reasons heretofore expressed.

(Exhibit not reproduced.)

OPINION OF BOARD: The facts of this case are not in dispute and for that reason will be briefly summarized.

Claimant Mrs. Oman, regularly assigned as PBX Operator, Position 343, at Topeka, Kansas, with assigned hours 8:30 A.M. to 5:00 P.M., six days per week, Monday through Saturday, with Sunday as her rest day, made written request under the provisions of Article III, Section 10 (a) of the Agreement between the parties that she be permitted to protect a one-day temporary vacancy to occur on PBX relief Position No. 325 on Sunday, September 12, 1948, because of the absence of the regular assigned occupant of the latter position, which was necessary to the continuous operation of the Carrier and had Thursday for a rest day. Notwithstanding Mrs. Oman had worked her six-day assignment on Position 343 that week the Carrier granted her request to work Position No. 325 on the Sunday in question. Pursuant to such authorization she worked the position on her rest day and in due course the Carrier paid her at the straight time rate for her services. Thereafter this payment

was protested on the ground that under the Agreement she should have been paid at the rate of time and one-half. Failure of the Carrier to allow such claim resulted in the institution of this proceeding.

Claimant bases her right to compensation as set forth in her statement of claim at the rate of time and one-half squarely upon the provisions of Article VIII of the current Agreement which is actually a readoption of the Standard Sunday and Holiday Work Rule, promulgated by the former United States Railroad Labor Board. Such Article reads:

> "Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Brithday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday)—shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Carrier and who are regularly assigned to such service, will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight-time rate."

This is not the first time the issue we are now called upon to decide has been before this Board. In Award 2537, where we were called upon to interpret an identical rule and apply it to a factual situation entirely similar we said,

> "There are standard rules promulgated by the United States Railroad Labor Board. Interpreting these rules in Decision No. 2853, that Board held:
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> "(1) That an employe who is regularly assigned to a regular position with Sundays off should be paid at the rate of time and one-half for work performed on Sundays while working temporarily in place of another employe those relief day is other than Sunday.
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> * * *
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> "We think this decision of the United States Railroad Labor Board should be, and is, conclusive on the merits of this dispute."

After careful consideration of the provisions of Article VIII, here involved, we have concluded that its terms clearly contemplate that an employe holding a regularly assigned position with a Sunday off as rest day who works that rest day while working temporarily in place of another employe is to be paid at the rate of time and one-half. Moreover, we are convinced that the interpretations given the so-called Standard Sunday and Holiday Work Rule by the Board promulgating it and by this Division of the Board in Award 2537 are entirely sound and should be followed and applied in cases where—as here—the rule and the facts on which those interpretations were predicated are not distinguishable. Therefore, based upon our own independent examination and construction of the instant rule and what we believe to be sound precedent as well we hold that the Carrier violated the provisions of Article VIII of the Agreement when it failed to pay claimant at the rate of time and one-half for the work performed by her under the conditions and circumstances heretofore fully related.

The fact the regular incumbent of Position No. 325 would have received straight time only if she had worked the position on the date in question has no bearing on the claimant's right to compensation. Claimant performed the involved work as an extra and it cannot be said she was regularly assigned to the work of the position under conditions which would bring her within the only exception to be found in Article VIII.

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 Third Division

ATTEST: A. I. Tummon
Acting Secretary

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