Award No. 5240
Docket No. CL-5199

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Agreement effective September 1, 1949, and is continuing to violate same by using persons in the Kansas City, Kansas, Seventh Street Station, Central Avenue Station, and Uptown Ticket Office and the Telegraph seniority departments, who hold no seniority rights thereunder, to relieve regular employes who are covered by the said Agreement, and;

(b) Employes Ethel Lake, E. Johnson, Delores Nelson and Norma Thurman, or successors, Telegraph Seniority Department, be paid at the rate of time and one-half their respective rates of pay for each day subsequent to September 1, 1949, they were available to work and on which days persons having no seniority rights were employed on their positions, and;

(c) Employes O. O. Shawgo and G. L. Shipley, or successors, Kansas City, Kansas, Seventh Street Station, Central Avenue Station and Uptown Ticket Office seniority department, be paid at the rate of time and one-half their respective rates of pay for each day subsequent to September 1, 1949, they were available to work and on which days persons having no seniority rights were employed on their positions.

EMPLOYES' STATEMENT OF FACTS: Rules 1, 2, and 4 of the Agreement between the parties which are pertinent to this dispute read:

"RULE 1—EMPLOYES AFFECTED: These rules shall govern the hours of service and working conditions of the following class of employes:

* * *

TELEGRAPH

Seniority Class One—Telephone Switchboard Operators.

Seniority Class Two—Messengers.

* * *

port of rules negotiated to effect a work week of 40 hours. The Carrier requests that your Honorable Board so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim of the System Committee is that employes in the Telegraph Seniority Department and the Kansas City, Kansas, Seventh Street Station, Central Avenue Station and Uptown Ticket Office Seniority Department to be compensated at the time and one-half rate because they were not used on their assigned rest days and the Carrier filled the positions by persons not having seniority in these departments.

When the Carrier, in compliance with the 40 hour week agreement, adjusted the work schedule for the Ticket Agent and Ticket Clerk at the Seventh Street Station, Kansas City, Kansas, a passenger station maintained seven days a week, it assigned the four rest days without bulletining the position to a person who had not previously established seniority on the department roster covering these positions. Likewise in the case of the two switchboard operators at the Union Station, the switchboard being operated as a six-day facility, it filled the additional rest day of each position by a person not having seniority rights in that department. The same situation existed with the two messenger positions which were operated as a seven-day facility.

The principle for which the Organization contends is that the regular employes holding established seniority have a prior right to relief work over persons who have not established seniority under the terms of the Agreement.

The Carrier contends that when it complied with the 40 hour week agreement it posted notices showing the rest days of each employe, and as these notices did not refer to the service or duties necessary to be performed a specific number of days each week to meet the operational requirements of the Carrier, the rest days of the individual did not become a part of the assignment and could be relieved under Rule 37 (f) by an extra or unassigned employe who otherwise did not have 40 hours of work.

When the Carrier assigned Winfrey to the four relief days at the Seventh Street Station, he had no seniority in that department and, because the relief position was not bulletined, he could not acquire seniority under Rule 2 of the current Agreement and the 1938 interpretation thereof. But it is the Carrier's position that these days were unassigned and that, therefore, under Rule 37 (f) he could be so employed. This latter rule reads as follows:

> "(f) **Work on Unassigned Days**
>
> Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The construction the Carrier placed on this rule is that an available "unassigned" employe need not have seniority in the department to which he may be assigned for work which is not bulletined. This flies directly in the face of the specific direction in Rule 28.5 (e) respecting the use of relief employes which limits the Carrier to employes of the same class in the same seniority district. The rules of the Agreement must be construed together, and when the parties said in Rule 37 (f) "available extra or unassigned", they intended "available" to include the concept of proper seniority standing. Otherwise, there would have been no necessity for the provision in 28.5 (e) reading: "* * * to perform relief work on certain days and such types of other work on other days as may be assigned under individual agreements."

We do not agree with the Carrier that the relief positions in the Passenger Department, Seventh Street Station or in the Telegraph Department became days which were not a part of any assignment merely because of the method used in posting the notice establishing the rest days. These positions had been operated as seven-day or six-day positions, and after September 1, 1949, the Carrier continued to fill them seven or six days as formerly. In the submissions the Carrier describes the switchboard in the Union Station as a six-day facility and the messenger positions as a seven-day facility. The Seventh Street Station is operated seven days each week. The rest days assigned after September 1, 1949, were the rest days of the position.

Thus, in principle, this situation does not differ from that involved in Award 5195, and we find that the Carrier did not comply with the Agreement when it assigned Winfrey to the relief positions in the Seventh Street Station.

A comparable situation existed with reference to the relief assigned to relieve the switchboard operators.

When a person holding no seniority under the Clerks' Agreement was assigned to relieve the messengers, Rule 28.5 (e) was likewise violated.

We find nothing in the current Agreement or the revision thereof effective September 1, 1949, that permits or authorizes work to be done by one without established seniority when there are those with established seniority available and willing to do the work. The claimants here were the occupants of the regular assignments to which the relief days related, there were admittedly no extra or furloughed employes available, and under 37 (f) they were entitled to the work. Award 5195.

The claim is for time and one-half for the days persons having no seniority were employed on their positions. On the principle heretofore well established, the allowance should be at the pro rata rate.

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

The facts show the Carrier violated the Agreement.

AWARD

Claims (a), (b) and (c) sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 5240

Docket No. CL-5199

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: Kansas City Terminal Railway Company.

Upon application of the representatives of the employes involved in the above award that this Division interpret the same in the light of dispute between the parties as to its meaning and application as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Docket CL-5199 on which Award No. 5240 was made presented the claims of certain employes of the carrier based on the contention that it had violated the agreement by using persons to relieve regular employes on their rest days when such persons so used did not hold seniority in the particular seniority department in which they were used. The Award sustained the claim on the theory that the current agreement did not permit work to be done by one without established seniority when there are those with established seniority available and willing to do the work.

It is the contention of the organization representing the employes that the carrier incorrectly applied the award. It is admitted that certain of the monetary claims have been paid, but the contention is now made that some of the claims described in Paragraph (b) of the Statement of Claim in the original docket have not been paid. The reason given by the carrier for not paying these claims is that the award (5240) sustained the claims "for the days persons having no seniority were employed on claimants' positions"; that payment has been made where such instances occurred; that the persons for whom the organization is now contending have not been correctly paid obtained a seniority date in accordance with a formula allegedly agreed upon in 1938.

Thus the essential question now presented to the Board does not involve the interpretation of any provision of the award, but rather the interpretation of rules involving the acquiring of seniority. There seems to be no dispute between the parties as to the actual meaning of the award. The dispute arises over its application and this in turn requires a determination of whether or not certain employes can obtain seniority by reason of the "formula" mentioned above. This presents a new question and is outside of the scope of an "interpretation".

We are obliged, therefore, to say that the issue presented by the application of the organization is not a proper one for determination by means of an interpretation of an award under Section 3, First (m) of the Railway Labor Act, as amended.

Referee Robert O. Boyd, who sat with the Division as a member when Award 5240 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.