

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That Carrier violated Rules of the Clerks' Agreement commencing with application of the Forty Hour Week Rules, effective September 1, 1949, when it failed to properly apply the provisions of said Forty Hour Week Rules in conjunction with rules of the General Agreement in affording required relief service on clerical positions (Callers) at the Stevens Point, Wisconsin, Roundhouse.

(2.) That the involved employees; namely, V. T. Lepinski and P. B. Elliott, first and second shift Engine Crew Callers respectively, be compensated for wage loss sustained by an allowance of one day's (eight hours) pay at overtime rate attached to their respective positions for the two days of each week commencing September 1, 1949, and continuing thereafter until the violation is corrected, that their positions were filled on their designated rest days by non employees—or persons employed by Carrier holding no rights for employment service under the terms of our Agreement with the Carrier that govern the hours of service and working conditions of the office, station, warehouse and storehouse employees, (Scope Rule) effective June 1, 1945.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, there were employed at the Stevens Point, Wisconsin, Roundhouse two positions designated as Engine Crew Callers. One of these positions was regularly assigned to V. T. Lepinski, hours of service from 10:00 A. M. to 7:00 P. M., with rate of pay of \$11.06 per day. It was a seven day position, and the assignee thereof, Mr. Lepinski, worked seven days per week with no designated rest days.

The second of these positions was regularly assigned to Mr. P. B. Elliott, a second shift Engine Crew Caller, with hours of service from 10:00 P. M. to 7:00 A. M. with rate of pay of \$10.63 per day. This also was a seven day position, and the assignee thereof, Mr. Elliott, worked seven days per week, with no designated rest days.

OPINION OF BOARD: This claim involves the performance of the work on rest days of two positions of engine crew callers at Carrier's Roundhouse at Stevens Point, Wisconsin, since the advent of the Forty Hour Work Week on September 1, 1949. The Claimants, V. T. Lepinski and P. B. Elliott are and were the regular occupants of these positions at all times herein material. These are seven-day positions and prior to September 1, 1949, Claimants were regularly assigned thereto for seven days each week with no designated rest days. However, with the advent of the Forty Hour, or five-day week, Lepinski was given a work week of Monday to Friday with Saturday and Sunday as his rest days. The hours of this position are from 10:00 A. M. to 7:00 P. M. Elliott was given a work week from Thursday to Monday with Tuesday and Wednesday as rest days. The hours of duty of this position are from 10:30 P. M. to 7:30 A. M.

Carrier established a regular relief assignment of these four rest days and issued its Bulletin No. 7 dated August 27, 1949 asking for bids thereon. No bids were received so Carrier assigned Robert P. Englebert thereto as of September 13, 1949. It should here be mentioned that Lepinski's position was higher rated than that of Elliott. When this relief position was bulletined Elliott offered to work Lepinski's position on Saturday and Sunday in place of his own. By agreement made with the General Chairman this was permitted. This is only mentioned because contention is made that it was done for the benefit of the persons who were assigned to this relief assignment when, as a matter of fact, it was, by agreement, done for the benefit of Elliott. As a result the hours of service on the four day relief assignment are from 10:30 P. M. to 7:30 A. M. Englebert remained on the position until February 5, 1951, when he quit to take training with this same Carrier to become a Machinist apprentice. He did this under the G. I. Bill of Rights.

When Englebert decided to quit, Carrier issued its Bulletin No. 6, dated January 19, 1951, asking for bids on this same relief assignment. The days thereof had been changed from Tuesday, Wednesday, Saturday and Sunday to Thursday, Friday, Saturday and Sunday. Why the rest days of the position held by Elliott were changed from Tuesday and Wednesday to Thursday and Friday is not shown. No bids were received so Carrier employed Lawrence Earl Francis and assigned him thereto as of February 8, 1951. He is apparently still occupying the position.

The System Board of Adjustment contends that Carrier thus filled these rest days with outsiders and doing so is in violation of their Agreement. Primarily involved is the manner in which relief was provided to fill the rest days of these positions. The question is, can Carrier establish regular relief assignments of less than five days and, if no bids are received, hire new employees and assign them thereto? We fully discussed and decided this issue in Award 6260, based on Docket CL-6200, which involved the identical question based on the same Agreement and between the same parties. Therein we held the Carrier could do so but that the person hired must actually become a bona fide employee. That Award is controlling here.

The Organization suggests that a person who has regular outside employment cannot qualify as a bona fide employee of a carrier. The term employee, as used in the Railway Labor Act, includes every person in the service of a carrier who performs any work defined by proper authority as that of an employee and who is subject to carrier's continuing authority to supervise and direct the manner of rendition of his services while performing it. They must accept the service with the intent, desire and expectation of becoming bona fide employees. It does not preclude them from having outside employment but they must, at all times, be subject to call and assignment with readiness to serve.

The Organization also contends that an employee who holds seniority with the Carrier under one collective bargaining agreement cannot be used to perform work coming under a collective bargaining agreement covering a different class or craft. Ordinarily it is not permissible, unless the agree-

ment so provides, to allow an employe to hold seniority in two different crafts or class of employes covered by different agreements at the same time. But such right under an agreement covering a class or craft can be forfeited, and usually is, when the employe seeks and obtains employment in a different class or craft covered by a different agreement.

Apparently Englebert had been in the Carrier's service for some time for he had seniority rating as a roundhouse laborer dating from February 5, 1947. This position was covered by the Firemen and Oilers Agreement. Due to reduction in force he was placed on a furlough status as of August 10, 1949. He thereupon obtained outside employment but returned to Carrier's services at the first opportunity on September 13, 1949. He held this position until he quit it to take up training to become a Machinist's apprentice. It would appear that he has always sought work with this Carrier and that he took this work with the intent, desire and expectation of becoming a bona fide employe. We think his whole record of service supports such a view. It would appear that he held himself subject to call and assignment, with willingness to serve, at all times. We find, when Englebert was hired and assigned to the relief position, he actually became a bona fide employe of Carrier.

Francis presents a more difficult problem. It appears he was and still is a bartender in a tavern in Stevens Point. It would appear that he has faithfully fulfilled all the duties of the relief position and there is nothing to show he has ever failed to respond when called upon. The only thing is his regular outside employment but we do not think this necessarily precludes him from becoming a bona fide employe. We find, when Carrier hired Francis and assigned him to the relief position, he actually had the intent, desire and expectation of becoming a bona fide employe of Carrier and that, in fact, he became such.

In view of what we have herein said we find the claim made to be without merit.

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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 17th day of July, 1953.