Award No. 6266
Docket No. CL-6114

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

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

(1) Carrier violated the Clerks' Agreement at the Florida Street Station, St. Louis, Missouri, by payment to employes named in Section (2) hereof for services performed as Check Clerks at pro rata rate of pay instead of overtime rate of the positions worked.

(2) The following employes be compensated at penalty or overtime rate for work performed as Check Clerks on their assigned rest days, as follows: Forrest Sulser on Sunday, October 9, 1949, R. E. Landrum on each of the following days: Sunday, October 9, 1949, Saturday, October 15, 1949, and Sunday, October 16, 1949, E. S. Wedley on Friday, October 7, 1949, and C. E. Nicely on Sunday, October 2, 1949.

EMPLOYES' STATEMENT OF FACTS: (1) There are employed at the St. Louis Florida Street Freight Station of the Carrier regular warehouse force including, among others, Check Clerks and Truckers-Laborers. The Check Clerks are Group 1 employes, as defined in Rule 1-1 of our General Rules Agreement, and the Truckers or Laborers are Group 3 employes. The seniority rosters of these employes are separate and distinct, that is, there is one roster for the Check Clerks and a separate and distinct roster for the Truckers-Laborers.

The rules do provide, however, for the promotion of employes from Group 3 to Group 1 and the retention of rights under certain situations, none of which are particularly concerned in the instant dispute.

(2) During the period covered by this claim, all of the claimants were regularly assigned as Truckers at Carrier's freight platform located at Main and Florida Streets, St. Louis, Missouri.

Forrest Sulser has Group 3 seniority as of February 12, 1949, but no seniority in Group 1. On Sunday, October 9, 1949, after completing forty hours work that week as a Trucker, he was required to perform work on his rest day as a Check Clerk.

however, if they take the assignment of a regular employe they will have as their days off the regular days off of that assignment."

The use of the type men here involved for extra work is clearly recognized by the rules and such men have performed extra work in Group 1 since schedule agreements were first negotiated covering clerical employes. The Note under Article 3 specifically authorizes their use and the use of new employes who have not established seniority. It reads:

"NOTE: The fact that seniority of employes does not begin until assigned by bulletin will not prevent use of employes who have not established seniority to perform extra work."

When Group 2 or 3 employes are used in Group 1 in accordance with these provisions they take the assignment of the regular employe the same as any other employe performing extra work.

It will be noted from the Statement of Facts that the Claimants took the conditions of the assignments they worked.

For example, C. E. Nicely worked on two positions as check clerk beginning Tuesday, September 27. The first job was a day job which he worked until October 1. On that date he went on a night job; observed Monday and Tuesday, October 3 and 4, as rest days of the position and on Wednesday resumed service on the same job. The claim is that he should be paid time and one-half rate on Sunday, October 2, on the basis that he had performed in excess of 40 hours in his work week. He desired the Group 1 work and was moved up to fill vacancies on such work in line with his seniority in Group 3. He could have declined the work and other employes would have been used. He took the conditions of the assignments he filled. He could not couple the work on two assignments to produce a penalty on Sunday, October 2. He had worked only one day on that assignment. The Carrier respectfully submits that his work clearly fell within the exception contained in Rule 32-4.

Similar conditions are present in the case of the other employes involved. They had not worked 40 hours on the assignment involved at the time of the claim.

The Carrier respectfully submits that the claim is not supported by the rules and is entirely without merit, and should be denied.

Data herein has been presented to representatives of the Employes. (Exhibits not reproduced.)

OPINION OF BOARD: Claims herein are based upon the current Agreement between the parties, effective April 1, 1946, and revisions by Memorandum Agreements effective July 22, 1949 and August 5, 1950, and also revised to conform to the provisions of the National Forty Hour Week Agreement, effective March 19, 1949.

The docket consists of claims filed on behalf of four employes, all holding seniority in Group 3, at Carrier's Florida Street Station, St. Louis, Missouri, for work performed on their rest days as check clerks in Group 1, but in which group the employes held no seniority. The employes are requesting pay at the time and one-half rate instead of the pro rata rate of pay, claiming a violation of the current Agreement and its amendments, and also a violation of the Forty Hour Week Agreement, effective March 19, 1949, on the part of the Carrier, by permitting said employes to work in excess of forty hours per week. There is no dispute between the parties that the named employes held positions in Group 3 as stowmen or freight truckers, and held seniority rights as such nor is it denied in the record that the employes performed work in Group 1 as alleged in the respective claims of each employe.

The Organization relies on Rules 32-4 and 32-5, also 32-7 (a), the Service or Rest Day rule, and in addition also relies on Award 5494 and supporting awards.

The question to be determined by us is, whether or not the employes are entitled to the time and one-half rate for the work performed on Group 1, where they held no seniority, but did perform work in excess of 40 hours a week. We have reviewed thoroughly the record in this case and the many awards cited by the parties in support of their contentions. It would be of no advantage to again here review the many arguments advanced by the parties. We have found no precedent awards having a similiar statement of facts as herein presented.

Award 5494 and similar sustaining awards do not contain the solution to our problem here since the facts and circumstances are not similar. In the case before us, we have employes working in Group 1 who have no seniority in Group 1, but do hold seniority in Group 3.

Rule 32-4, as set out in the Memorandum Agreement of July 22, 1949, is as follows:

> "Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate **except** where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g), Rule 27-3."

This Board has held many times that the rule as a whole must be considered, not just that portion of a rule which may be favorable to a party in presenting a claim. The exceptions in a rule are a basic part and should receive full consideration. In the case before us, we are of the opinion that the first exception,

> " . . . . except where work is performed by an employe due to moving from one assignment to another . . . ."

governs the holding we are obliged to make. When the employes were assigned the work in Group 1 by Carrier, they **moved** from one assignment to another and such work performed clearly comes within this exception to the rule as stated. They were not regularly assigned employes in Group 1, held no seniority in such group, and therefore were not entitled to more than pro rata pay for the work performed. There is no doubt the contention of the Organization would be correct, if the work performed had been on the regular assignments of the employes during the periods the work was performed, but the record clearly shows the employes were performing work, not a part of their regular assignment, but were filling temporary assignments in a group in which they had no seniority rights. We agree with the reasoning of the Board as set out in Awards 5705, 5811, 6018, and the claims as filed are 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 Agreements as alleged.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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