

Award No. 6383

Docket No. CL-6302

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Peter M. Kelliher, 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 rules of the Clerks' Agreement at Topeka, Kansas, when it failed to properly compensate Mrs. A. E. Noble for service performed on her regular assigned rest day, March 20, 1951; and,

(b) Mrs. E. A. Noble shall now be paid the difference between time and one-half and the straight time she was allowed for service performed on March 20, 1951.

EMPLOYEES' STATEMENT OF FACTS: On the date the instant claim arose, Mrs. E. A. Noble was the regularly assigned occupant of Message Inspector Position No. 118 in the seniority district of the Eastern Lines Relay and PBX Offices, Topeka, Kansas, with assigned hours 11:30 P.M. to 7:30 A.M., five days per week, Thursday through Monday, rest days Tuesday and Wednesday. During her work week beginning Thursday, March 15, 1951, Mrs. Noble worked her Message Inspector Position No. 118 on each of her regularly assigned days, March 15, 16, 17, 18 and 19, 1951.

On Tuesday, March 20, 1951, Mrs. Alice Oman, the regularly assigned occupant of Relief Position No. 325 in the same seniority district reported ill and unable to protect her regular assignment 11:30 P.M. to 7:30 A.M. on that date, thus creating a temporary vacancy of one day's duration on Position No. 325, which vacancy, if to be filled, was subject to the provisions of Article III, Section 10-a, of the current Clerks' Agreement. Carrier elected to fill this vacancy and there being no off-in-force reduction employee available, called Mrs. E. A. Noble, who was off duty on her regular assigned rest day, to report and protect this one day vacancy and compensated her at the pro rata for the service she performed on her rest day instead of compensating her at the penalty rate of time and one-half as required by the rules.

a work week. It will thus be apparent that the Carrier has no obligation to use an off-in-force-reduction employe who would by reason thereof work more than 40 hours in a work week and can, thereby, avoid penalty time and one-half payments for time worked in excess of 40 hours or five (5) days in a work week. It will, however, be observed that the amended rule did not place similar restrictions on the rights of regular employes who make application for temporary vacancies under Item 2 of the first sentence of Article III, Section 19-a and since the Carrier is thus obligated to use such regular employes, it should be obvious that when used to protect a temporary vacancy, to which entitled, they are moving from one assignment to another within the meaning of Article VII, Sections 1-b and 1-c.

In conclusion, the Carrier respectfully submits that the claim of the Employees in the instant dispute is entirely without support under the Agreement rules in effect between the parties and should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts relating to the claim in this case are substantially similar to those considered by the Board in Award 6382. The identical Parties and Agreement are involved, therefore, the Board must hold that the same principles set forth in the earlier Award are controlling.

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 Employees involved in this dispute are respectively Carrier and Employees 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 agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1953.