Award No. 6852
Docket No. CL-6627

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, PERE MARQUETTE DISTRICT

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

(a) The Carrier violated and continues to violate the Agreement between the parties, effective August 1, 1947, amended September 1, 1949, when it required Ticket Clerk L. J. Billadeau and Baggageman-Janitor Ed Hasse, Traverse City, Michigan, to fill 6-day positions on the 6th day by requiring them to work two recurring calls on each Saturday subsequent to June 6, 1952, instead of working them 8 hours as provided in the Rules Agreement, and

(b) That Ticket Clerk L. J. Billadeau and Baggageman-Janitor Ed Hasse be allowed the difference between the amounts they received and the amounts they should have received at the punitive rate for Saturday, June 7, 1952 and for each Saturday subsequent thereto until the condition is corrected.

EMPLOYES' STATEMENT OF FACTS: This controversy arises out of the fact that the Carrier discontinued filling 6-day positions six days a week, and required employes assigned thereto to fill their positions on the 6th day with recurring calls. The following notice was furnished to Claimants on June 6, 1952:

"L. J. Billadeau

E. Hasse—Ticket Office, Taverse City, Michigan

"Effective tomorrow June 7th, 1952 until further notified you will both take a call for No. 101 from 11:30 A. M. to 1:30 P. M. and for No. 106 from 5:00 P. M. to 7:00 P. M.

"However, for your convenience, it will be permissible for the baggageman to work from 10:30 A. M. until 2:30 P. M. and the ticket clerk from 3:00 P. M. until 7 P. M. We will try this for

in view of the definition of the word "work" as used in this rule. This word "work" refers to service, duties, or operations and not to the work week of individual employes. Rule 25 (1) so establishes.

Item (b) of the Employes' claim in this case is that claimants shall be paid the difference between the amounts they received and the amounts they would have received at the punitive rate for each Saturday since June 7, 1952. Carrier submits claimants have already been paid at the punitive rate for all calls they were required to work. Carrier further submits your Board has consistently held that the punitive rate does not properly apply as penalty for time not worked. Award 5978 deals with this specific point alone.

In summary Carrier has proved:

FIRST

The rules cited by the organization as being violated in this case have not in fact been violated as charged. The same organization has in a previous case claimed that the same rules should have been applied as Carrier has applied them here.

SECOND

No rule of the agreement restricts the number of calls to which an employe under the Clerks' agreement may be subject on rest days. The penalty pay for calls is expressly stated in the call rule, and this penalty has been paid.

THIRD

As the Employes' submission presumes claimants were the proper employes to have been worked on the dates of claim, there is no question but that Rule 25 (4) was applicable. This rule outlines how employes worked on rest days will be compensated. Carrier accordingly has no alternative under the rules but to work and pay the employes so outlined in this rule, and this has been done.

FOURTH

The Employes' claim for the punitive rate for time not worked is also entirely without merit.

Carrier accordingly submits claim should be denied.

All facts and data presented herewith have been placed before the Employes in handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 7, 1952, the positions of Ticket Clerk and Baggagemen-Janitor at Traverse City, Michigan, were 6-day positions. The Ticket Clerk was assigned Monday through Friday with Saturday and Sunday as rest days and the Baggageman-Janitor was assigned Tuesday through Saturday with Sunday and Monday as rest days. Relief was furnished on Saturdays and Mondays until June 7, 1952, when each was directed to work Monday through Friday and take two 2-hour calls each Saturday in order to handle two trains arriving at different hours of the day. It is the contention of the Organization that the work on the sixth day of a 6-day position cannot be so assigned. Specifically stated, the Organization asserts that Rule 25 (2)-e is being violated when the relief position is not filled and that Rule 25 (1) requires that the regular employes be used 8 hours when required to work the sixth day of the 6-day position. The Organization contends that the position is a 6-day one which Carrier cannot

properly reduce to a 5-day position and cover the sixth day (Saturday) work by regular recurring calls.

The record shows that these two positions were 6-day positions under the 40-Hour Work Week Agreement. Not only is it presumed that a position once established as a 6-day position continues to be such, but the record here discloses that the same work continued to exist on Saturday as existed before Carrier attempted to reduce it to a 5-day week. We point out also that a 6-day position must be filled 6 days, although if more than one position exists involving the same craft and class, such positions may be staggered so that at least one employe works on each of the 6 days. Under such circumstances, additional relief positions may be filled or not filled in accordance with the operational needs of the Carrier.

Under the facts in the present case, the 6-day positions could not be filled by assigning the occupant of the regular positions two calls on the sixth day. The occupants of the two positions not being of the same class, the requirements of the Agreement are not met by the assignment of one or both of the two claimants on a call basis on the sixth day. An affirmative award for each claimant is therefore required. Claimants are entitled to the penalty rate for the time worked on the sixth day and the pro rata rate for the work lost; except as to holidays for the latter which shall be at the time and one-half 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

That the Agreement has been violated.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1955.