

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

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

(a) That the Carrier violated the Rules Agreement effective Sept. 1, 1949, particularly Rules 50-A, paragraph (e), 54 and 58 when it failed to properly fill or provide relief for rest day of occupant of Bureau 82 at New Haven Ticket Office, New Haven, Conn., on Sunday.

(b) The incumbent of Relief position, Bureau No. 100, be paid 3½ hours at punitive time for every Sunday commencing June 8, 1952, until this claim is adjusted.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimants in this case hold positions and the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective Sept. 1, 1949, covering clerical, Machine Operators, other office, Station and Storehouse employees between the Carrier and this Brotherhood which has been filed with your Board.

This Rules Agreement will be considered a part of this Statement of Facts.

On Sept. 8, 1952, the force in the New Haven Ticket Office consisted of the following positions:

Bureau No. 83—Cashier. Hours 10:00 A. M. to 6:30 P. M.—
Sat. & Sun. off—5-day pos.

Bureau No. 86—Accountant. Hours 8:30 A. M. to 5:30 P. M.—
Sat. & Sun. off—5-day pos.

Bureau No. 86—Cashier. Hours 8:30 A. M. to 5:30 P. M.—Sat.
and Sun. off—5-day pos.

for time claims growing out of alleged violations of the agreement in respect to relief days, starting time, overtime, etc.

"Will you please acknowledge.

"Yours truly,

/s/ E. B. PERRY"

The assignment as to which claim was withdrawn is indistinguishable in principle from ticket seller Bureau 100. The settlement of the earlier case is persuasive here.

CONCLUSION

The awards of this Division establish that the forty hour week agreement does not require that specific assignments in seven day service be relieved on their off days. Accordingly, the incumbent of Bureau 100 can establish no right, preferential or otherwise, to relieve Bureau 82 on Sunday. The claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 8, 1952, there were 7 seven-day ticket clerk positions in the New Haven, Connecticut ticket office, which were staggered to meet work requirements. This indicated that there were 14 relief days to be filled if the operational needs of the Carrier required it. The Carrier assigned two employees to relief positions designated as Bureau No. 81 and Bureau No. 100. Bureau No. 81 relieved Bureau No. 91 on Sunday and Monday; Bureau No. 76 on Tuesday and Wednesday; and Bureau No. 77 on Thursday. No issue is raised as to this relief assignment. Bureau No. 100 relieved Bureau No. 85 on Monday and Tuesday; Bureau No. 77 on Wednesday; Bureau No. 82 on Saturday; and was assigned extra on Sunday to hours which did not correspond with the hours of any regularly assigned ticket clerk. The only issue in the case is the right of the Carrier to assign Claimant, the occupant of Bureau No. 100, to this alleged extra work on Sunday. It is the contention of the Organization that Claimant should have been assigned to relieve Bureau No. 82, 10:00 A. M. to 6:30 P. M., instead of extra work from 1:30 P. M. to 10:00 P. M. The Carrier asserts that the Sunday assignment was in accordance with the 40-Hour Week Agreement. The case appears to be one of first impression.

The applicable rule is 50(e), current Agreement, which provides in part:

"All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day service or combination thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

"Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

The ticket office is kept open seven days a week between the hours of 6:00 A. M. and 12:30 A. M. The seven ticket sellers are staggered to cover the operational needs of the Carrier during these hours. Fourteen rest days exist which the Carrier may or may not fill in accordance with its operational re-

quirements. It has filled nine such rest day assignments and created a Sunday assignment different than any rest day assignment existing on that day within the hourly limitations of the staggered assignments.

We think it is clear that Rule 50(e) means that relief assignments may be made to the extent that operational needs require, and that such relief positions may include different starting times on different days provided they take the starting times of the employees they are relieving. The rule does not contemplate assignments of rest days on hours different than those of the employees whom they are relieving. The record indicates that the work of the seven regular positions was the same. Likewise, the work of the two relief men was the same as the seven ticket clerks, including the Sunday work of the Claimant. If there were only four relief days available for assignment to the Claimant, other work on another day different from the ticket clerk work could have been assigned under the rule to make a five day relief assignment. But so long as the work is that growing out of the staggering of the ticket clerks, the relief assignments must comply with the second paragraph of the quoted rule. If this were not so, relief assignments could be used to defeat the legitimate objects of the overtime and call rules. We think the Carrier violated the Agreement when it failed to assign Claimant 10:00 A. M. to 6:30 P. M. on Sunday. An affirmative Award is required.

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 was violated.

AWARD

Claim sustained.

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.