Award No. 6973
Docket No. CL-6752

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

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, on Saturday, August 12, 1950, it failed and refused to compensate Mr. J. L. Cooper, Macon, Georgia, at proper time and one-half, and

(b) The Carrier shall compensate Mr. J. L. Cooper the difference between proper time and one-half and the straight time rate paid him.

EMPLOYES' STATEMENT OF FACTS: The Claimant, J. L. Cooper, is employed as Clerk by the Carrier at Macon, Georgia. Mr. Cooper's status is that of a furloughed or unassigned Clerk, working extra when needed.

On Monday, August 7, 1950, Claimant Cooper worked as Utility Clerk. Tuesday, August 8, through Saturday, August 12, 1950, Mr. Cooper worked the position of Rate and Transit Clerk, rest days Sunday and Monday, the regularly assigned occupant being on vacation. For the service on Saturday, August 12, 1950, the sixth day he had worked that calendar week, Claimant Cooper made claim for time and one-half. The Carrier made payment at straight time and declined the claim for time and one-half.

The claim was handled in the usual manner up to and including the highest officer designated by the Carrier for that purpose, without settlement being made. Correpondence exchanged between the Parties while the dispute was being handled on the property is attached hereto and by reference is made a part hereof, and identified as Employes' Exhibits "A" through "O."

There is an Agreement between the parties, effective October 1, 1938, with subsequent amendments, which by reference is made a part of this Statement of Facts.

POSITION OF EMPLOYES: The following Rules or parts of Rules are quoted from the effective Agreement:

Seniority—Rule 4

than forty hours in the example contained in Rule 4 (e)—in each case it was due to "moving from one assignment to another or to or from an extra or furloughed list" as that term is used in Rule 10 (b).

There is no conflict whatever in the respective provisions of Rules 4 (e) and (g) and 7½ (h) and (i). The work week of extra yard clerks, furloughed and extra clerks is a period of seven consecutive days beginning with Monday, but when they take the assignment of a regular employe they assume the conditions of that assignment, including the rest days, for the period of the vacancy.

In both sections (e) and (g) of Rule 4 there is a specific provision that an extra yard clerk, furloughed or extra clerk cannot **claim** extra service after working forty hours starting with Monday if another extra or furloughed clerk who has not worked forty hours in that work week is available. This means that an extra yard clerk cannot claim extra clerical service from the yard clerks extra board on another assignment after having worked five days or forty hours beginning with Monday, but if he completes forty hours beginning with Monday while riding and filling an assignment that has **not** ended, he continues to fill such assignment for the duration of the vacancy, and for such service receives pay at straight time rate, unless displaced by a senior clerk as provided in sections (a) or (b). If he is riding a temporary vacancy that has **not** ended after completing 40 hours beginning with Monday, he is **not** claiming work beyond 40 hours. Under such circumstances, he is **not** working first-out from the extra board after completing 40 hours.

The same situation obtains in the case of a furloughed or extra clerk utilized under Rule 4 (g). He cannot **claim** extra service on another assignment after completing 40 hours beginning with Monday, but if he completes five days or 40 hours beginning with Monday while filling an assignment that has **not** ended, he remains on that assignment for the duration of the temporary vacancy. In so doing, he is **not** claiming extra service but is simply taking the conditions of the assignment he was already filling.

Thus under sections (e) and (g) of Rule 4, an extra clerk receives pay at the time and one-half rate if required to perform extra service on a different assignment after having completed forty hours beginning with Monday on some other assignment or other assignments. On the other hand, he receives pay at the straight time rate for work in excess of forty hours beginning with Monday if already filling and taking the conditions of a vacancy that had **not** ended when he completed forty hours.

It has been shown that the parties to this dispute have expressly provided in the agreement, revised effective September 1, 1949, that the exception "due to moving from one assignment to another or to or from an extra or furloughed list" contained in Rule 10 (b) is **not** limited to regularly assigned occupants, but applies to extra employes as well; also that claimant obtained extra service on the assignment of assistant rate and transit clerk before completing forty hours beginning with Monday, August 7, and that the vacancy in that assignment had **not** ended when he completed forty hours on Friday, August 11; therefore, he was **not** subject to displacement on Saturday, August 12, but was entitled to fill the assignment that day at the straight time rate.

Claim is not valid under the agreement and should be denied, and carrier respectfully requests that the Board so hold.

All relevant facts and data involved in this dispute have heretofore been made known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is an extra clerk at Macon, Georgia. On Monday, August 7, 1950 Claimant worked as Utility Clerk. On Tuesday,

August 8, 1950 he worked the position of Rate and Transit Clerk, the rest days of which were Sunday and Monday. On Tuesday, Wednesday, Thursday, Friday and Saturday, he worked the latter position and now claims time and one-half for Saturday, the sixth consecutive day he had worked.

The record shows that on Monday, August 7, 1950 Claimant filled the position of Utility Clerk on account of the absence of the regularly assigned occupant of that position. He thereby accepted all the conditions of that position including its rest days. When he assumes the rest days of a position, he necessarily assumes the work week of that position. When he assumes the work week, the first day thereof will not necessarily be Monday. But he only worked one day in the work week of the Utility Clerk position. He earned no rest days in the work week of that position. After working Monday, August 7, 1950, on the Utility Clerk position, he protected the position of the Assistant Rate and Transit Clerk Tuesday through Saturday. That position was regularly assigned Tuesday through Saturday, with Sunday and Monday as rest days. When he was called to protect this latter vacancy he accepted all the conditions of that position, including the rest days thereof. Having worked Tuesday through Saturday, the five working days of that work week, his rest days were Sunday and Monday. Saturday was not a rest day of the position which he was protecting and consequently he was entitled only to straight time rate for Saturday.

We point out that when Claimant moved from the Utility Clerk position to that of the Assistant Rate and Transit Clerk position, he gave up all the conditions incidental to the former and assumed all those of the latter position. He worked 5 days in the latter position and earned the rest days of that work week which were Sunday and Monday. The Organization argues that the mere fact that an extra clerk works six consecutive days entitles the employe to the time and one-half rate on the sixth day. This is not necessarily so. He takes the rest days incidental to his work week. Having worked but one day (Monday) on the Utility Clerk position before being called to protect the Assistant Rate and Transit Clerk position, he earned no rest days in that work week. But when he assumed the latter position and worked the five assigned work days he earned the rest days of that position which were Sunday and Monday. The beginning of his work week was Tuesday, the same as the position he was filling. Claimant is governed by Rule 25 (h) and not Rule 25 (i), current agreement. He was in position to claim the Saturday work as against a Junior extra employe who did not have 40 hours work in his work week. If Claimant had been deprived of the Saturday work, he would have had a valid claim for the time lost as against a junior extra employe. Awards 6970 and 6971. We point out that we are here dealing with an extra employe called to protect regularly assigned positions. What we have said is not intended to apply to an extra employe doing extra work not a part of any assigned position or positions. That question can be dealt with only when and if it is presented to the Board.

The Organization cites Awards 5494, 5794, 5807 and similar Awards in support of its position. Many of them are distinguishable and some are not. We must concede that other Awards contain statements which are at variance with what we have here said. We quite agree that previous decisions of the Board ought to be followed unless good reason exists for not so doing. Our previous holdings, however, are not in all respects consistent. For this reason we shall discuss the applicable rules in the hope that a consistent and uniform application of the rules under all factual situations can be obtained.

We are here dealing with a rule applicable to extra employes who are filling temporary vacancies or performing relief work on regularly assigned positions. Rules 25 (h) and 25 (i) become applicable. They provide:

> "(h) Rest Days of Extra or Furloughed Employes—To the extent extra or furloughed men may be utilized under this agreement, their days off need not be consecutive; however, if they take

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

"(i) Beginning of Work Week—The term 'work week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven consecutive days starting with Monday."

It will be noted at the outset that paragraph (h) relates to extra or furloughed employes and makes no reference to unassigned employes. It will be noted also that paragraph (i) relates to regular assigned and unassigned employes and makes no specific reference to extra or furloughed employes as a class. We think, therefore, that "extra" and "unassigned" employes were not intended as synonymous terms. This is supported by Decision No. 2 of the Forty-Hour Week Committee wherein it is clearly demonstrated that such terms were not intended to be synonymous.

It seems to have been assumed in our former Awards on this subject that an extra employe "called" to fill a temporary vacancy or to work in relief on a regularly assigned position was not "assigned" thereto within the meaning of paragraph 25 (h). We appear to have assumed that the word "assigned" mean a bulletined assignment when the rule does not so indicate. The words "if they take the assignment of a regular employe they will have as their days off the regular days of that assignment" imply that they are entitled to work all the work days of the assignment and likewise assume its rest days. In other words, such employes are assigned to do the work of the position on designated days and to take the rest days thereof. They, therefore, for the purposes of paragraph (i), assume the position of "regularly assigned employes" and their work week begins on the first day on which the assignment is bulletined to work. In the case before us Tuesday would be the first day of the work week. Claimant therefore did not become entitled to two days rest until he had worked the work days of his work week which were Tuesday through Saturday. The assigned rest days of his work week were Sunday and Monday. We can see that an extra employe doing extra work which is not a part of a regularly assigned position, and consequently has no assignment of work or rest days, could fall within the provision of paragraph (i) making his work week seven consecutive days commencing with Monday, but when he occupies a regularly assigned position he assumes all the conditions of that position.

It is contended that anytime an employe works more than five consecutive days in seven, he is entitled to overtime under Rule 27 (b) which provides in part:

"(b) Work in excess of forty straight time hours in any work week shall be paid for at one and one-half times the basic straight time hourly 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) of Rule 25.

"Employes worked on more than five days in a work week shall be paid one and one-half times the basic straight time hourly rate for work on the sixth and seventh days of their work weeks, 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) of Rule 25."

It will be observed throughout this rule that overtime accrues when more than 40 straight time hours are worked in any **work week** and where work is performed on the sixth and seventh days of any **work week.** It does not infer that overtime necessarily accrues on the sixth day when an extra employe has worked six consecutive days; it accrues when he has worked six

days in a work week. If, as here contended, Monday is always the first day of an extra employe's work week, Saturday and Sunday would necessarily be his rest days and a Carrier could never use an extra man on Saturday and Sunday except at the rest day rate. Such is not the intention of the Forty-Hour Week Agreement.

We are cited to Awards 6479 and 6504. We think these Awards are consistent with the views we have here expressed. In those cases, Claimants worked the five days of their work week and were then used to relieve on other positions. In relieving such positions, they were not voluntarily displacing the regular employes or assuming them as the result of a successful bid, nor did they move to relieve regular employes before their rest days were earned. They were worked on the rest days of their work weeks and were entitled to rest day pay therefor. Such work can properly be claimed by a junior extra employe at the straight time rate and, if no junior extra or furloughed employe is available, it may be worked as rest day work at the rest day rate of pay.

We think the reasoning contained in Awards 6970 and 6971 when considered in connection with what we have herein said, correctly interprets the rules applicable to extra employes called to protect regularly assigned positions.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of April, 1955.