Award No. 6980
Docket No. CL-6966

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated rules of agreement effective September 1, 1949 when it failed and refused to assign senior employe Frank P. Morgan who was available, to perform work attached to his position on unassigned days.

(b) That the Bureau shall now be required to reimburse claimant, Frank P. Morgan, at time and one-half the scheduled rate in effect on Saturday and Sunday, December 10th and 11th, 1949, also Saturday, December 24, 1949, Christmas holiday that was celebrated on Monday, December 26, 1949 and on Saturday, January 7, 1950 account assigning junior employes to perform this work on unassigned days.

EMPLOYES' STATEMENT OF FACTS: We are listing only the three Fruit and Vegetable Inspectors located at Chicago, Illinois with their seniority date as reported on the seniority roster issued January 1, 1950 by the Milwaukee Bureau District:

Frank P. Morgan	Fruit & Vegetable Inspector	Aug. 21, 1928
M. P. Kowitz	Fruit & Vegetable Inspector	July 1, 1933
S. J. LaBarbera	Fruit & Vegetable Inspector	Oct. 1, 1933

These three Bureau employes were located at the Chicago Produce Terminal, each with assignments Monday through Friday with Saturday and Sunday as their rest days. The claimant (Frank P. Morgan) on December 13, 1949 confirmed in writing to District Inspector R. O. Wells, Jr. that the claimant had on Friday, December 9, 1949 requested the opportunity of working his position on Saturday and Sunday, December 10th and 11th, 1949. His immediate supervisor, Mr. J. D. Riley, supervisor at the Chicago Produce Terminal instead assigned junior employes M. P. Kowitz on Position No. 38 to perform the eight (8) hours on Saturday, December 10, 1949 and S. J. LaBarbera, on Position No. 123 to perform the work on Sunday, December 11, 1949.

Also, in Award No. 5747 the Honorable Referee denied a claim submitted to you and commented as follows—"When a contract is negotiated and existing practices are not abrogated or changed by its terms such practices are enforceable to the same extent as the provisions of the contract itself."

The September 1, 1949 Agreement in effect on this property did not in any way abrogate or change the practice of rotating our employes in the Perishable Department and such being the undeniable fact there is only one conclusion that can be reached and that is there has been no violation of the terms of our agreement and under the circumstances there is no basis for this claim.

In closing we wish to emphasize that the Perishable Freight Inspectors and our Coopers at the Chicago Produce Terminal are all regularly assigned employes and inasmuch as this is a definite fact it necessarily follows that the claim should be denied.

All data contained herein has been presented to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Where more than one position performing the same service existed at one location it was a practice to rotate Sunday and Holiday work among the regular occupants of the positions. The Brotherhood contends that the Agreement effective September 1, 1949 eliminates that practice and requires that rest day and holiday work be assigned to the senior of the regular occupants of such positions.

Rule 3 (f) of that Agreement provides:

> "Seniority rights of employes covered by these rules may be exercised only in cases of vacancies, new positions or reduction of forces, except as otherwise provided in this agreement."

Rule 34 (i) governs work on unassigned days and thus controls the work involved in this claim. It provides for performance by an "unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe." There is no mention of seniority or the senior regular employe.

The only reference to seniority in connection with overtime work is in Rule 34(d), which is not applicable. Rule 34 (c) provides for working employes regularly assigned to positions on which overtime is required for overtime before or after assigned hours and for extra work on holidays. Then Rule 34 (d) provides:

> "When additional help is required for overtime work, employes will be assigned to such overtime in accordance with seniority, fitness and ability."

It is perfectly obvious that such rule applies only to situations where more overtime help is needed than can be provided by the employes regularly assigned to the positions on which overtime is required. That is not the situation here.

Hence, it appears that the Agreement effective September 1, 1949 did not abrogate the practice of rotation of opportunity for work on unassigned days. Hence the claim is 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 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 26th day of May, 1955.