

Award No. 7030

Docket No. CL-6686

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**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

(a) Carrier violated and continues to violate the Rules of the Clerks' Agreement when it uses outsiders and/or employees covered by other agreements to perform relief work which is covered by the Clerks' Agreement.

(b) Employee Harry Black shall be compensated for eight (8) hours at the time and one-half rate of his position for each Saturday and Sunday work was performed on Baggageman's position No. 312 at Calmar, Iowa by an outsider or employees covered by another agreement, retroactive to September 3, 1949.

EMPLOYEES' STATEMENT OF FACTS: Employee Harry Black, with seniority date of September 1, 1925, assigned to Baggageman's Position No. 312 at Calmar, Iowa, assigned hours 10:00 P. M. to 7:00 A. M. with one hour meal period was, prior to September 1, 1949, assigned to work six days per week, Monday through Saturday and to regularly perform the necessary work of his position on Sunday. He was paid for the Sunday work on a call basis.

Effective September 1, 1949, the Carrier, by its own action established Position No. 312 as a seven day position and hired J. D. Iverson, a student of Decorah Lutheran College who lived at Calmar, Iowa where he returned for week ends, to perform relief work on Position No. 312 on Saturday and Sunday only of each week, for which he was paid eight (8) hours at the straight time rate of the position for each day worked. Mr. Iverson continued to perform the Saturday and Sunday relief work until October 20, 1950, when he left the service of the Carrier. The Carrier then hired Gerald Becker, regularly employed by the Myers Feed Company at Calmar, Iowa **six days per week**, to perform relief work only on Position No. 312 and only on **Saturdays and Sundays**. This arrangement continued until about January 14, 1951, when trains No. 3 and 18 were discontinued. Mr. Becker was then used on Saturday only of each week and the Sunday work of handling mail and baggage for trains No. 122 at 12:25 A. M., No. 22 at 1:15 A. M., No. 11 at 5:20 A. M. and No. 103 at 5:50 A. M. was assigned to the third trick operator, Gust Stanz, an employee covered by another agreement. Mr. Becker was paid for a full eight (8) hours at the straight time rate for each day worked.

6. The claimant has in no way been harmed. He was guaranteed by schedule rule 5 days and he has received 5 days—full time. He has no right to recover for work beyond 5 days per week which he did not perform and which, to the contrary, was performed by an extra available employee in accordance with the established practice and schedule rules.

We therefore respectfully request that the claim be declined.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned to Baggageman Position No. 312 at Calmar, Iowa, 10:00 P. M. to 7:00 A. M., Monday through Friday, with Saturdays and Sundays as rest days. On the effective date of the 40 Hour Week Agreement, Carrier employed J. D. Iverson, a student of Decorah Lutheran College who returned to his home in Calmar on weekends, to work the rest days of the seven day position. On October 20, 1950, Iverson left the service of the Carrier and Gerald Becker was employed to fill the rest days of the position. Becker worked six days each week for the Myers Feed Company at Calmar. On January 14, 1951, Becker was trick operator, an employee covered by the Telegraphers' Agreement. The assignment of Claimant was changed from time to time thereafter. The foregoing is sufficient to determine the issues presented in the case.

The Organization contends that a regular relief position should have been established at Calmar, Clear Lake and Garner. That issue was determined adversely to the contentions of the Organization in a companion case. Award 6997.

It is clear, also, that Iverson and Becker did not have seniority or employee status prior to the time they were used on the rest day work here involved. The reasoning set out in Award 6997 controls the decision on that issue.

The question is presented as to whether or not an employee under another craft agreement can properly perform the rest day work of the position. This has previously been decided in the negative by this Board, Awards 5240, 5501, 6855.

The Organization contends that the Agreement was violated when the Sunday rest day work was assigned to the third trick telegrapher. The record shows that the present claim was initiated on March 8, 1950. The baggageman position was abolished on November 21, 1952. The work assigned to the third trick telegrapher of which complaint is here made was not assigned until after the baggageman's position was abolished. It is clear therefore that the Organization has attempted to expand the claim beyond its original scope. There was no dispute about a third trick telegrapher doing rest day work when the claim was first made. It may not be considered here. This part of the claim is not properly before us and must therefore be dismissed.

The claim will be sustained in accordance with the views expressed herein. The claim being for work lost, the penalty is the pro rata rate thereof, except for any holiday work involved. In case of the latter, the time and one-half rate applies.

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 to the extent shown by the Opinion.

AWARD

Claim sustained at the pro rata rate, except as to any holiday work which will be paid for at time and one-half, in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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