Award No. 7032
Docket No. CL-6893

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) That the carrier violated the provisions of Rule 37, paragraphs (b) and (c) of the Agreement of October 1, 1942, amended, when it failed to compensate Henry S. Shumate at the rate of time and one-half for work performed on Saturday and Sunday, June 24 and 25, 1950, and;

(b) That the said Henry S. Shumate be paid the difference between straight time rate received for June 24 and 25, 1950, and the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Henry S. Shumate, the claimant, was employed by the Carrier as a Janitor, Passenger Department, September 28, 1949, and carried on the Passenger Seniority Class Three Roster with seniority as of that date. Effective January 20, 1950, a force reduction was made in the Janitor force, Shumate being the last man on the roster was reduced to the status of a furloughed employe under the operation of the provisions of Rule 14, reading as follows:

"RULE 14

REDUCING FORCE

"When reducing forces seniority rights shall govern. Employes whose positions are abolished may, within three (3) days, subject to fitness and ability, exercise their seniority rights over junior employes. Other employes affected may exercise their rights in the same manner.

"Employes whose positions are abolished during their absence may exercise their seniority within three (3) days after their return.

"When forces are increased employes shall be returned to service in the order of their seniority rights. Employes desiring to avail themselves of this rule must file their addresses with the proper official at the time of reduction, advised promptly of any change in

was assigned to perform the work in question he was moved from the furloughed list to perform that work in the separate and distinct seniority groups to which such work belonged. We find nothing in the Opinion, or for that matter in the rule itself, warranting a conclusion that the exceptions in such rule are controlled or even dependent upon the nature of the work performed. Nor is there merit in a further contention advanced by Claimant to the effect that regardless of what is said and held in Award 5798 the exception relating to moving '* * * to or from an extra or furloughed list * * *' cannot be separated from the exception '* * * due to moving from one assignment to another * * *.' Use of the word 'or' before each of the exceptions to the rule definitely establishes that neither of such exceptions is dependent upon the other. Under all well defined definitions 'or' is a co-ordinating particle that marks an alternative."

In conclusion Shumate came from the furloughed list to work the vacancy of a regular employe and took the days off of that employe beginning Monday, June 5, 1950, through the close of shift Friday, July 16, 1950, after which he automatically reverted to the furloughed list. His work-week started Monday, June 19, 1950, under which he was called in seniority order for the first vacancy, Monday and Tuesday, June 19 and 20, and at the close of shift Tuesday reverted automatically to the furloughed list. On Wednesday, June 21, 1950, he was called from the furloughed list to fill the assignment of a regular employe having an assignment of Wednesday through Sunday and filled that assignment from June 21, through July 2, 1950, taking the days off of the assignment of the regular employe, after which he reverted to the furloughed list Monday, July 3, 1950. In working around to the days off of the assignment of the regular employe Shumate worked seven days at straight time rate as contemplated by Rules 28.5(h) and 37(c).

Shumate moved from the furloughed list to the assignment of a regular employe and was properly paid under the rules agreement.

All of the above has been handled with the Organization either by correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a furloughed janitor. He was used to relieve a regular employe (Vogel) for two weeks while the latter was on vacation. Vogel's assignment was Monday through Friday, with Saturday and Sunday as rest days. Claimant worked it the weeks commencing June 5 and June 12. He observed the four rest days of the position, the last one being Sunday, June 18, 1950. On Monday and Tuesday, June 19 and 20, he relieved E. E. Von Pertz, who was ill. On Wednesday, June 21, 1950, he relieved M. Draskovich, who was on vacation. The latter was assigned Wednesday through Sunday, with Monday and Tuesday as rest days. Claimant worked Wednesday, June 21 through Sunday, June 25, and then observed Monday and Tuesday, June 26 and 27, as the rest days of that position. Claimant contends that as he was required to work seven consecutive work days, June 19 through June 25, he is entitled to pay at time and one-half for the last two days, June 24 and 25. The Carrier contends that Claimant was correctly paid the straight time rate.

The controlling rules are:

"To the extent extra or furloughed men may be utilized under applicable agreements or practices, 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." Rule 28.5(h).

"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." Rule 28.5(i).

When Claimant worked Monday and Tuesday, June 19 and 20, on Von Pertz's position he thereby accepted all the conditions of that position including its days. But he only worked two days on that position. He earned no rest days in the work week of the position. He then protected the position occupied by Draskovich, Wednesday through Sunday, June 21 through June 25. When he was called to protect this latter vacancy he accepted all the conditions of that position, including the rest days (Monday and Tuesday) thereof. Saturday and Sunday, June 24 and June 25. The case is similar to that decided by our Award 6973. We reaffirm the reasoning of that award. The manner of determining the work week and rest days of extra men used on relief assignments of regular employes is fully discussed and determined in Awards 6970 and 6971. On the basis of the reasoning of the foregoing awards, the Claimant was correctly paid the straight time rate on the days involved in this dispute.

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 June, 1955.