

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Clerks' Agreement on Saturday and Sunday, October 17 and 18, 1953, when it blanked Expense Bill Clerk position No. 134. Also

(b) Claim that Mrs. Merle W. Law be compensated for loss sustained account not called to work position No. 134 on those two days.

EMPLOYES' STATEMENT OF FACTS: Expense Bill Clerk position No. 134 is a seven (7) day position with Saturday and Sunday as the assigned rest days. Mrs. Law was assigned to this position by Bulletin No. 168-A of August 24, 1953.

The rest day work (Saturday and Sunday) is assigned to the occupant of Relief Position No. 206.

On Saturday and Sunday, October 17 and 18, 1953, the occupant of Relief Position No. 206 was absent because of illness.

There were no extra or unassigned employees available to work the temporary vacancy and, under the agreement, Mrs. Law should have been called.

The Carrier did not call Mrs. Law but, instead, blanked the position on the two days.

POSITION OF EMPLOYES: The question presented to your Honorable Board is whether or not the Carrier can legally abolish a position when the occupant is absent for a two day period.

Rule 25 of the current agreement reads—

"RULE 25. EXTRA BOARD.

"(a) When it is mutually agreed, an extra board will be maintained and rules governing the manner of working extra board employees will be established in writing by mutual agreement.

of the rule is even more clearly shown in paragraph (b) of Rule 57; certainly when an employee calls his supervisor in a case of sudden illness and reports unable for duty on short notice, carrier could not conceivably be expected to determine all the listed requirements in advance in deciding whether or not to fill the short vacancy. Carrier must, often on a moment's notice, give consideration to whether work normally to be performed by the sick employee can be kept up to a satisfactory extent by other employees, and then later, possibly after the short vacancy no longer exists, determine whether conditions specified in Rule 57 entitle the employee to payment. Were it a violation of the agreement to blank a regular position where regular occupant cannot fill it, then this Rule 57, a rule primarily for the benefit of the employees, would be inoperative. Or if the only circumstances under which a regular position could be blanked when regular occupant could not fill it were those in which this absent regular employee qualified for sick leave payment, meeting the several requirements of Rule 57, then, as indicated above, application of this Rule 57 would be materially restricted. Incidentally, in this case Rushing would have been allowed full pay for October 17 and 18 had it not been for the fact that he had previously during 1953 used up the entire ten days allowable under Rule 57.

Division Chairman Newbill referred in his letters October 27 and November 2, quoted in Carrier's Statement of Facts, to Item 6 of Superintendent Magee's letter (it was not a bulletin) of May 13, 1953. Carrier is not quoting this letter in this submission as to do so would require quoting additional documents referred to therein, and Carrier does not consider it necessary to burden the case with these as evidently Mr. Newbill's only reason for these references is to establish that Mrs. Law is proper claimant. Carrier is willing to concede that had it been necessary, under the prevailing circumstances, to fill Rushing's vacancy on those two days it would have attempted to call Mrs. Law.

Your Board has consistently ruled that the blanking of positions because of the absence of the regularly assigned employees is not in itself a violation of the agreement in the absence of a prohibition therein, and certainly the applicable agreement here contains, from cover to cover, no such specific prohibition or, for that matter, any rule even implying such a prohibition.

Carrier therefore requests that the Board deny the claim in its entirety, and if, as shown in Employees' Statement of Claim, this claim is based on the Clerks' Agreement, Carrier is confident the Board will do so.

If, on the other hand, claim is found to be supported by some other agreement or understanding with which Carrier is not at this time familiar (certainly such was not mentioned in handling on the property), and Board should sustain Claim (a), Carrier does, of course, request the Board to limit Claim (b) to pro rata time.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was the occupant of a regular seven-day Expense Bill Clerk position. Her two rest days, along with the rest days of other regular employees, were made a part of a regular relief assignment. After Claimant had worked her regular five-day assignment, the Relief failed to report account illness.

According to the Carrier, another Relief Expense Bill Clerk assigned to relieve another Expense Bill Clerk position "could perform the duties necessary to comply with the rules and the balance of the work could be deferred." This is what was done.

The claim is that the occupant of the regular position should have been called to work her two rest days at the overtime rate.

First. A position is blanked only when no one works it. This position was not blanked, because it appears that another performed some of the

duties of the position although some were deferred, on both of the two rest days in question.

Since the Carrier elected to fill the position, it should have been worked under the conditions upon which the sick Relief would have worked it. This means that whoever stepped into her shoes stepped into her eight-hour assignment. If the Carrier had worked her less than eight hours and deferred the balance of her work, she would have been entitled to eight hours' pay because Rule 37 (a) provides eight hours' pay for a day's work of eight hours "or less." If the claim is good, it is therefore good for eight hours' pay each day.

Second: There was no extra clerk available and Claimant's preferred right to the work over the Relief Clerk used is established.

On familiar principles the claim should not be sustained at the overtime rate.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1956.

DISSENT TO AWARD NO. 7255, DOCKET NO. CL-7198

This Award is in error for the following reasons:

1. Claim is that Carrier violated the Clerks' Agreement when it blanked Expense Bill Clerk position. The Opinion includes a conclusive holding that, "This position was not blanked * * *." Inasmuch as the premise on which the claim rests evidently was found to be non-existent, a sustaining award obviously is incorrect.

2. The Opinion further concludes that, "A position is blanked only when no one works it." The word "blanked" is used in the claim, but it is not to be found in the agreement rules relied upon to support the claim. In common usage in the railroad industry, a position is said to be "blanked" when no relief employe is called to replace an absent employe, whether or not a part of the absent employe's duties are performed by others. The opinion that the position was not blanked because another performed some of the duties is at variance with common usage of the word and, also, is unsupported by the record as the parties themselves are in agreement that the position was blanked.

Sick Leave Rule 57 provides, in part:

“(a) Where the work of an employe is kept up by other employes without cost to the Carrier, * * * a clerk * * * will not have deductions made from his pay for time absent on account of bona fide case of sickness * * *.

“(b) The employing officer must be satisfied that * * * no additional expense to the Carrier is involved. * * *.”

which definitely contemplates that other employes will perform at least some, if not all, of the duties of the sick clerk without additional expense to the Carrier. The Opinion is contrary to this controlling rule and in conflict with many Awards of this Division.

3. The Award of the majority herein places an incongruous construction on the Sick Leave Rule which is neither expressed nor contemplated; it is a specific rule designed to apply in all cases in which a clerk is absent on account of a bona fide case of sickness. Under the rule the sick clerk suffers no deduction in his pay under the conditions and to the extent indicated therein; but the Carrier suffers a loss of 8 man-hours of work in any event. The Opinion and Award of the majority would have the Carrier pay some employe a day's pay, even where the sick clerk has not used up the maximum sick leave in the event some of the duties of the absent employe's position are performed by other employes. In such a case, no payment could be due an employe under the sick leave rule inasmuch as additional expense to the Carrier would result; thus the Sick Leave Rule would be voided. The Carrier might well fill the vacancies of all sick clerks and obtain 8 man-hours of work in return for the day's pay instead of paying someone a day's pay for no work. While in such circumstances the Sick Leave Rule would cease to provide the benefits which the parties intended, the Carrier is left but little choice when such unsound awards are rendered against it as here.

4. It is not our prerogative to amend the claim beyond that actually made and presented on the property. See Award 5226. Claim that Carrier violated the Agreement when it blanked the position should have been denied inasmuch as it is found, as expressed in the Opinion of Board, that “This position was not blanked * * *.” The Division is not at liberty to change the claim in order to sustain it.

/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp