

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 January 17, 18 and 19, 1953 when it blanked several stevedore positions at Settegast Station. Also

(b) Claim that senior available employees be reimbursed the exact amount of loss sustained because of the violation.

EMPLOYEES' STATEMENT OF FACTS: Under Rule 47 (a) the warehouse operations at Settegast Station are not seven (7) day operations, however, at the request of the Carrier agreement was reached providing that fifteen (15) stevedore positions would be assigned seven (7) days each week. Six relief positions were established to work the rest days.

As a result of this agreement the Carrier paid straight time for the Sunday work which otherwise would have had to be paid for at the time and one-half rate.

Despite the agreement mentioned above the Agent, on Friday, January 16, 1953 instructed the Assistant Warehouse Foreman—

"If you are short handed account regular assigned employees laying off, do not endeavor to fill their place since an accumulation of tonnage is preferred over excess payroll."

On Saturday, January 17, 1953 two employees were absent; Sunday, January 18, 1953 four employees were absent, and on Monday, January 19, 1953 three employees were absent. None of the vacancies were filled.

POSITION OF EMPLOYEES: This claim, as well as others involving the warehouse force at Settegast Station, arises because of Carrier being unable to decide the force and assignment it needs or desires, and failure to respect agreements dealing with this force and assignment.

The Employees are, at all times, willing to cooperate with the Carrier in meeting operating problems and have, in many instances, gone to the

Carrier respectfully requests that the Board deny the claim and is fully confident that the Board will do so provided, as indicated in Employee's Statement of Claim, claim is based on violation of the agreement. If, however, support is found for the claim in some other agreement or understanding, not called to the attention of Carrier by the Organization either in correspondence or conference in connection with this dispute, and Board should sustain claimed violation, Carrier does ask that Board limit any time that might be allowed to pro rata time.

The matters covered in this submission were included generally in the handling on the property, **except** Carrier did not call to Organization's attention that S. Toney had worked his regular position No. 440 and been compensated therefor—see Exhibits "A" and "B"—and therefore that the third entry on Mr. Newbill's original claim was in error. Carrier apologizes to Organization for failing to detect this error; this failure was due to the fact that Carrier, always confident of its position in the case and believing the Organization would concur in its position, did not investigate the individual cases listed. Carrier of course knew that it had been following the practice on which the claim was based and did not, until investigating, doubt that all nine listed were actual cases of failing to fill temporary vacancies.

(Exhibits not reproduced).

OPINION OF BOARD: This claim presents the question whether the Carrier has agreed to fill seven-day positions seven days a week in all circumstances or whether the Carrier can blank a seven-day position when the occupant fails to report for work account illness.

In July of 1950 there were about 51 regular Stevedore-Breakout positions at Settegast warehouse, all five-day positions, with Saturday-Sunday rest days. There was, however, a regular volume of weekend work and by special agreement with the Organization, subject to cancellation on notice, the rest days of 4 five-day positions were changed to Tuesday-Wednesday, "this (according to the Carrier) will afford us two gangs to work freight on Saturdays and one gang on Sundays and will avoid a heavy accumulation of cars to be worked on Mondays and will eliminate a considerable amount of penalty time we have been paying for this purpose."

In January of 1951 the Carrier staggered the rest days of 6 Stevedore positions to Sunday-Monday and again the Organization agreed, subject to cancellation on notice.

In November of 1951 the Carrier changed 15 of the 51 five-day Stevedore positions to seven-day positions and created 6 regular relief assignments. The Organization asserted that the establishment of these seven-day positions was a direct violation of Rule 47 (a) but finally withdrew its objection with its consent again subject to cancellation on notice.

On December 16, 1952 the General Chairman wrote the Carrier as follows:

"During conference in your office December 2, 1952, we discussed claim arising because of persons not covered by our agreement performing work that is covered by our agreement at Settegast Warehouse.

"It developed that one cause of such violations was failure of all regularly assigned stevedores to report for work, and you called Mr. Warren and instructed him, in such instances, to call furloughed men and, if none available, to double the regularly assigned men who were available. Mr. Warren stated to you that the previous night he had called the only furloughed man and doubled one regular man.

"If Mr. Warren continues to do this it should eliminate many of the violations."

In January of 1953 on the dates under claim the following regular occupants of seven-day Stevedore positions laid off account illness:

- 2 of 15 assigned Saturday January 17;
- 3 of 15 assigned Sunday January 18; and
- 3 of 15 assigned Monday January 19.

The Carrier blanked these positions and the blanking was accomplished pursuant to an instruction given to the Foreman which read:

"In view of our present high cost of freight handling and lack of tonnage available, be sure that you do not work Bookman, Davis or any other unassigned stevedore over the coming week end.

"If you are short handed account regular assigned employees laying off, do not endeavor to fill their place since an accumulation of tonnage is preferred over excess payroll."

Claim is made on behalf of the senior available employees.

First: The old Sunday Rule bargain, by virtue of which straight time on Sundays was said to have been exchanged for a guarantee against blanking positions "necessary to continuous operation of the carrier" (Awards 4550, 561 and others), has been supplanted by a new bargain which is expressed in considerable variety and detail in the Forty Hour Week amendments found in Rules 37 and 47 of this Agreement.

Rule 47(a) explicitly and without limitation eliminates the payment of punitive rates for Sunday work as such. No specific provision in Rule 37 of the Agreement makes it mandatory upon the Carrier to fill temporary vacancies when the occupant of a position lays off of his own accord. It has been concluded that the Forty Hour Week amendments do not provide a guarantee against blanking a position in these circumstances (Awards 6691, 5589 and 5528).

Second: It is true, however, that the provision of Saturday and Sunday rest days is one of the primary objectives of the Forty Hour Week Rule; and that the price of deviation from this objective is compliance by the Carrier with the requirements of the Rule with respect to staggering, nonconsecutive rest days, six-day positions and seven-day positions (see Awards 6852, 6502, 6075, 5797, 5710, 5555 and 5247).

Third. The letter of the General Chairman dated December 10, 1952 did not amount to a guarantee that these positions would be filled in all circumstances including illness of the occupant. As the letter itself shows, the parties were primarily addressing themselves to the performance of work by persons not covered by the Agreement. We are unable to conclude that this letter represents anything more than a commitment as to how the Carrier should apply seniority when conditions of employment existed to which they should be applied and they were not applicable here (Awards 6889 and 6142).

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

That the parties waived oral hearing thereon;

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

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 19th day of March, 1956.