Award No. 7297
Docket No. CL-7584

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Edward F. Carter, Referee

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## PARTIES TO DISPUTE:

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

## THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

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

(a) That the Carrier violated and continues to violate the terms of Clerks' Agreement and memoranda in connection therewith, when, beginning Saturday, December 9, 1950, it failed and refused to call Mr. J. R. McKenzie to work on his unassigned rest days of Saturday and Sunday of each work week, instead using regularly assigned employes for such relief work, and

(b) That Mr. J. R. McKenzie be paid one minimum day at the rate of time and one-half times rate beginning with Saturday, December 9, and Sunday, December 10, 1950, and continuing thereafter for each Saturday and Sunday Agreement is thus violated.

EMPLOYES' STATEMENT OF FACTS: The claimant, Mr. James Robert McKenzie, during the period involved in this claim, was the regularly assigned incumbent of position No. E-4 (1), classified as "Station Master", located at the Carrier's Ashland, Kentucky, Passenger Station. Position No. E-4 (1) is subpect to all of the rules of the current agreement, except Rules 3 (b), 4, 12, and 18 (b). These rules are the rules of the agreement covering promotion, assignment and displacement; Rule 12 being applicable in situations involving vacancies and new positions of less than 30 calendar days' duration in that the agreement does not require that such vacancies be bulletined.

Mr. McKenzie was regularly assigned to a work week of five days of eight hours each, 8:30 p.m. to 5:30 a.m., meal period 12:30 a.m. to 1:30 a.m., Monday through Friday, with rest days Saturday and Sunday. The station operation is carried on seven days a week. The rest days of Mr. McKenzie, Saturday and Sunday, are unassigned days in this seven-day operation — not a part of any assignment.

Mr. Jake Richard Huffman is also employed in this station operation. He is the regularly assigned incumbent of position No. A-26 (7), classified as "Assistant Baggage Agent". Position No. A-26 (7) is not excepted from any

involved herein, subject to the qualifications provided as to using an employe with the same, or as nearly as possible the same, starting time.

(2) The carrier selected a relief employe during the period of this claim in conformity with Section 2.

(3) There is, therefore, no justification for the claim in this case, and it should be declined.

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All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was assigned as Station Master at the passenger station in Ashland, Kentucky. Claimant's assigned rest days were Saturday and Sunday, and they were not made a part of a regular relief assignment. They were filled by J. R. Huffman who held a regular assignment of Assistant Baggage Agent with Thursday and Friday as rest days. Huffman's use as Station Master on Claimant's rest days created a two-day vacancy in his position which was filled by qualified furloughed employes. The Claimant contends that he should have been used on his rest days instead of Huffman under Rules 30 (e) and 35 (b). The applicable portions of these rules provide:

"All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement." Rule 30 (e).

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an avilable 'cut off' (furloughed) employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe. * * *" Rule 35 (b).

The Carrier relies upon a special agreement entered into on July 25, 1949 and made effective September 1, 1949. By this agreement station masters and assistant station masters are excepted from Rules 3 (b), 4, 12, and 18 (b), which deal primarily with seniority, promotion and displacement, temporary vacancies, and reducing force. Rules 30 (e) and 35 (b) are not excepted. The applicable portion of this special agreement provides:

"Section 4. New positions and vacancies on positions of station master and assistant station master of less than thirty (30) calendar days duration will be filled by appointment from employes covered by the scope of the Clerks' Agreement. Extra or unassigned employes filling a temporary vacancy of station master or assistant station master of less than thirty (30) days duration will take the conditions of the regular incumbent with respect to rest days. * * *"

"Regularly assigned clerical employes rearranged to relieve station masters or assistant station masters will retain the rest days to which they are regularly assigned, and if required to work * * *."

There is much in the record as to the meaning of this supplemental agreement as it relates itself to the current schedule agreement. It would lengthen this opinion unduly to specifically discuss every contention raised. We shall confine ourselves to a concise statement of our conclusions.

Under Rule 30 (e) Carrier is required to establish all possible relief assignments in six and seven-day service. It is not questioned that during the period of this claim that a regular relief position was not established which included the rest days of Claimant's position. Claimant's rest days were therefore unassigned days. Under Rule 35 (b) these rest days should have been filled (1) by a furloughed employe not having 40 hours work that week; (2) by the regular employe. There was no furloughed employe available, consequently the work belonged to Claimant.

The Carrier contends that the special agreement requires a different result. We are in accord with Carrier's contention that the agreement of July 25, 1949, is special, and that a special agreement controls over a general one and leaves the latter to operate only outside the scope of the specific agreement But the special agreement provides only that new positions and vacancies on positions of Station Master and Assistant Station Master shall be filled by appointment. If a relief position covering Claimant's rest days had been established, it could have been filled by appointment. Or if an ocupant of such position had reported out of service for any reason, Carrier could have filled the temporary vacancy by appointment as limited by Section 2 of the special agreement. But insofar as the unassigned rest day work was concerned, when it was not included in a regular relief position, its performance was controlled by Rule 35 (b).

Carrier argues that the positions of Station Master and Assistant Station Master requires special training and ability and that it was for these reasons that they were excepted from certain rules of the agreement. From this it is argued that is was never contemplated that extra employes, possibly new and inexperienced, should be used on these positions. But the quoted portion of Section 4 of the special agreement definitely shows that their use was contemplated.

We definitely conclude that the issue before us is controlled by Rule 35 (b) of the current agreement. There is no conflict between that rule and the special agreement upon a close examination. If the parties had intended that unassigned rest day work of Station Masters and Assistant Station Masters was to be performed in a manner different than as provided in Rule 35 (b), the rule should have been excepted from application as to them. An affirmative award is required.

**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 violated.

**AWARD**

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1956.