

Award No. 8273
Docket No. CL-7913

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(1) Carrier violated the rules of the Schedule for Clerks when it utilized the services of extra clerk Francis Bratcher as Yard Clerk on Sunday, June 27, 1954, following completion of an assigned work week as Assistant Warehouse Foreman, Monday through Friday, and compensated him at straight time rate for eight (8) worked on Sunday, June 27, 1954.

(2) Extra Clerk Francis Bratcher shall be compensated for the difference between straight time rate he was paid, and punitive rate for eight hours used as Yard Clerk on Sunday, June 27, 1954.

JOINT STATEMENT OF FACTS: F. E. Bratcher was an extra clerk and is shown on the Kansas City Terminal Division seniority roster for clerks with seniority dating from October 23, 1950.

Mr. Bratcher was used during the period Monday, June 14, 1954, through Friday, June 25, 1954, in accordance with his seniority standing on the clerks' seniority roster, to fill a temporary vacancy on assignment of Assistant Warehouse Foreman during the period that the regular assigned employe was absent on vacation of ten (10) consecutive work days, June 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1954.

Mr. Bratcher was subsequently used on Sunday, June 27, 1954, to fill a temporary vacancy on assignment of East End Yard Clerk.

Mr. Bratcher was the senior extra unassigned clerk on Sunday, June 27, 1954.

Mr. Bratcher did not perform service on the assignment of Assistant Warehouse Foreman on Tuesday, June 22, 1954, due to illness, and did not perform service on Saturday, June 26, 1954.

The dates and assignments on which Mr. Bratcher performed service during the period referred to above are set out in chronological order below:

assignment is bulletined to work, and for unassigned employees shall mean a period of seven (7) consecutive days starting with Monday.'

This provision defines 'regularly assigned' employees and names but in terms fails to define 'unassigned' employees. It recognizes two classes of employees, the 'regularly assigned' and the 'unassigned'. It, read with the two parts of paragraphs quoted from Rule 12, Section 3(a), at least inferentially recognizes but two classes of work, one which is performed under a regular assignment and one which is not.

It would seem to follow that an employee who, in his employment, falls within the second class is not performing work of an assignment, and when he moves from one such position to another he does not, within the meaning of the exceptions discussed, move from one assignment to another."

The disputes involved in Awards Nos. 5794, 5795 and 5796 of this Division, which involved facts similar to those present in the instant case and which arose on this property, were presented to this Division by the Brotherhood of Railway Clerks, Freight Handlers, Express and Station Employees based on the contention that Rule 12, Section 1, paragraph (i) provides that an extra or unassigned employee, when filling temporary vacancies of regular assigned employee, begins his work week as of Monday, and when forty (40) hours or five (5) days of work have been completed by Friday, punitive rate should be allowed for work performed on Saturday or Sunday.

The Carrier, after receiving the Awards of this Board sustaining the claims in those cases, fulfilled the directive contained in the orders accompanying those awards and paid the claimants in accordance therewith and also so applied Rule 12, Section 1, paragraph (i) in all future cases, including the one involved in this docket.

As previously stated, the claimant was an extra clerk and it was extra work that he was performing. Under Rule 12, Section 1, paragraphs (h) and (i), stating that for an extra unassigned employee a work week is a period of seven consecutive days starting with Monday, and five pro rata days of work, five eight-hour days in a work week of seven days, beginning on Monday, may be spread through a period of seven days, or through Sunday.

In view of all the foregoing, the contention of the Committee should be dismissed and the claim denied.

The substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto, and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant here was an extra employee and, as such, was used to fill the assignment of a regular employee who was absent on vacation. In doing so, Claimant was governed by Rule 12, Section 1(h), which provides in pertinent part:

"(h)—Rest Days of Extra or Furloughed Employees

" * * * if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment."

Claimant, having taken the assignment of a regular employee, had as his days off the regular days off of that assignment, and as he was required to work on Sunday, June 27, one of the regular rest days of that assignment, Part (1) of the claim will be sustained.

Due to the facts and circumstances involved in this dispute, Part (2) of the claim will be dismissed.

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 Part (1) of the claim will be sustained and Part (2) will be dismissed in accordance with Opinion.

AWARD

Parts (1) and (2) of claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1958.