

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**

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

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

(1) That Carrier violated rules of currently effective Agreement dated January 1, 1952, when on Monday, February 15, 1954, they blanked clerical position No. 3, Albany Yard Office, from 12:50 P. M. to 3:30 P. M. during part of its normal work assignment, 7:30 A. M. to 3:30 P. M.

(2) That Homer Hadley who occupied this position from 7:30 A. M. to 12:50 P. M. and was available and willing to continue his labor from 12:50 P. M. to the normal quitting time of the job at 3:30 P. M. be allowed pay for the balance of the day, namely 2 hours and 40 minutes.

EMPLOYEES' STATEMENT OF FACTS: Clerical position No. 3, seven day per week job, 7:30 A. M. to 3:30 P. M. daily in the Albany Yard Office, is regularly assigned to Mr. W. E. Emerson. His week day assignment is Saturday to Wednesday with Thursday and Friday as rest days. A relief clerical worker, job R-1, is assigned to work Emerson's rest days, Thursday and Friday of each week.

Mr. Emerson was off duty account sickness February 13 to 17, inclusive. The temporary vacancy created by his absence was filled:

On Saturday, February 13 by Homer Hadley, regularly assigned to position No. 7, who completed the work of position No. 3 and worked 2 hours overtime doing the work of his own assignment. Wyona Jones, regularly assigned position No. 2, worked 3 hours overtime on February 14, completing the work normally assigned to Hadley on Saturday, February 13.

On Sunday, February 14, by Dale Mazecheck, extra clerk.

On Monday, February 15, by Homer Hadley, regularly assigned position No. 7 but was off on his rest day on this date.

sickness are to be paid up to certain number of days when no additional expense to the Carrier is involved.

In the light of the foregoing, and in harmony with the plain provisions of the Agreement, particularly Rule 59 (c), the contention of the employees should be summarily dismissed and the accompanying claim unqualifiedly denied.

All data in support of the Carrier's position has been submitted to the Organization and made a part of the particular question here in dispute. The right to answer any data not previously submitted to the Carrier by the Organization is reserved by the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: As will be noted from the reading of the claim it is based upon the Carrier's dismissal of Claimant from his position after he had worked five hours and twenty minutes when according to him he should have been permitted to work the full eight hours and paid for the full day. The work was on his rest day.

The Organization contends that Claimant's case is covered by Rules 13 and 26 (c) both of which rules "provide short vacancies 'WILL BE FILLED.'" (Emphasis supplied)" i. e. worked for the full eight hours.

Carrier on the other hand contends Claimant was properly paid under Rule 59 (c)—Service on Rest Days—"Service rendered by an employee on his assigned rest days shall be paid for under call Rule 60 * * *"

The Organization argues "The sole purpose of the Rule (59 (c) supra) as it appears in our Agreement with the S. P. & S. is to provide for time allowances to employees called on their rest days for overtime service that is, generally speaking, for service normally attached to their own job that arises in many instances on five and six day positions. The instant case is not of that type."

Now it may very well be as the representative of the employees on this Board stated in his oral argument that the situation on this Carrier at the time "contemplated" the application of the rules (13 and 26 (c) supra) but whatever the Claimant did on this particular tour of duty it was "service rendered" within the meaning of Rule 59 (c) entitling the Carrier to pay him under Call Rule 60, which was done.

Conceding that the claim is good under 59 (c) as amended by the agreement between these parties effective August 1, 1957, we are not permitted to read the Organization's "contemplation" into the rule prior to that time.

It is a well known rule of construction that where there is a dispute as to the possible application of two conflicting rules, that the one having specific application must be used. This dispute never would have arisen if Claimant had not been called to work on his "rest" day and Rule 59 (c) applies specifically to work on "rest" days, notwithstanding the fact that the situation involved also created a "short" vacancy as contended for by the Organization, but Rules 13 and 26 (c) do not have specific application here.

Our conclusion is that the Carrier did not violate the agreement, and the claim must be denied.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

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.