Award No. 8305
Docket No. CL-7719

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated rules of the Clerks' Agreement during period December 3, 1949 to April 30, 1950, in filling the rest days, i.e., Saturday and Sunday of each week, that were so designated for the regular incumbent, A. M. Cooper, on position of a Report Clerk, Florida Street Station, St. Louis, Missouri.

(2) That Report Clerk Cooper be reimbursed for wage loss sustained, namely a day's pay at Report Clerk's overtime rate, from Saturday, December 3, 1949, until the rules violation was corrected effective Saturday, May 6, 1950.

EMPLOYES' STATEMENT OF FACTS: The Carrier designated position of Report Clerk, rate $12.12 per day, Florida Street Station, St. Louis, as a five day position with application of the Forty Hour Week Rules of the Chicago, March 19, 1949 National Agreement. A. M. Cooper was assigned to this position by Bulletin No. 76, November 15, 1949. Employes' Exhibit No. 1.

Effective December 3, 1949, Carrier changed this position from one of five days per week to one of seven days per week with Saturdays and Sundays as the designated rest days of the regular incumbent, Mr. Cooper. The Carrier did not, however, establish a regular relief assignment to afford relief on the designated rest days of the regular assignee—Cooper—pursuant to Rule 27-3 (e) (Regular Relief Assignments), neither did they require the work that then became "work on unassigned days" that is, not a part of any assignment, to be performed by an available extra or unassigned employe who did not otherwise have forty hours of work that week in accordance with the provisions of the "Work on Unassigned Days" Rule 32-8 (Forty Hour Week Rules). Further they did not call the regular employe, claimant, as required by the Rule. Instead they removed William Baker, a regular assigned relief Check Clerk, off his regular assignment, i. e.,

tomarily do when they make agreements; included among the rules which will need revision to make them conform to **the staggered 40-hour work-week recommended are those dealing with the following matters:** (Page 38 of the report).

'. . . (d) **That the working rules should conform to the revised workweek and, therefore, employes are not to have the option of continuing former rules which they may regard as more favorable but which are inconsistent with this intent.'** " (Page 39 of the report). (Emphasis supplied).

It is clear from the above, that the organizations in presenting their case to the Emergency Board plainly indicated they desired a shorter work week without reduction in pay.

Further, the Emergency Board's report indicated it was their intention to apply the forty-hour principle in the manner which would be the **least disturbing and costly to the industry.**

This intent is further evident from Article II. Section 1(g) (7) of the Forty-Hour Week Agreement in which it is stated regarding problems arising in connection with non-consecutive rest days:

"(7) The least desirable solution of the problem would be to work some regular employes on the sixth or seventh days at overtime rates and thus withhold work from additional relief men."

The Carrier respectfully submits there clearly was no violation of Rule 32-8 in the present case. Rest days were properly established and the relief on Saturday and Sunday was properly handled in accordance with the rules.

Without prejudice to its position, as previously set forth herein, that the claim is entirely without support under the rules, the Carrier submits that the claim that Report Clerk should receive an allowance at time and one-half rate for work not performed is contrary to the well established principle consistently recognized and adhered to by the Board that the right to work is not equivalent to work performed under the overtime and call rules of an agreement. Please see Awards 4244, 4645, 5195, 5437, and 5764. There are many others also.

In conclusion, the Carrier respectfully reasserts that the claim of the Employes is entirely without merit or support under the rules and should be denied in its entirety.

All data herein has been presented to representatives of the Employes.

(Exhibits not Reproduced.)

OPINION OF BOARD: This case presents the same issue as Award No. 8304 and is governed by that Award. The claim here is not a continuing one, but covers a specific period of time which ended prior to the final declination on the property. It is therefore sustained as presented, but at the pro rata, not the penalty, rate.

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 to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1958.