# Award No. 8563
# Docket No. CL-8266

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Harold M. Weston, Referee**

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## PARTIES TO DISPUTE:

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

## THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 4-A-1, 4-A-2, and 5-E-1, by holding Clerk R. E. Tumbleson off his regular clerical position at Plymouth, Indiana, Fort Wayne Division, on Labor Day, September 7, 1953, and assigning the duties of the position to another employe.

(b) The Claimant, R. E. Tumbleson, should be allowed eight hours pay, at the punitive rate, for Labor Day, Monday, September 7, 1953, on account of this violation. (Docket W-923)

**EMPLOYES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, an amended covering Clerical, Other Office, and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant, R. E. Tumbleson, is the incumbent of Clerical Position Symbol F-52, at Plymouth, Indiana, Fort Wayne Division. He has a seniority date of October 13, 1944, on the seniority roster of the Fort Wayne Division, in Group 1.

Position F-52 has a tour of duty 6:00 A.M. to 10:30 A.M., and 11:30 A.M. to 3:00 P.M., Monday through Friday, with Saturday and Sunday rest days. This is a five day position.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced).

**OPINION OF BOARD:** The question before us is whether or not the Carrier violated its Agreement with the Petitioner when it excused the Claimant, the incumbent of a clerical position, designated F-52, at Plymouth, Indiana, from duty on Labor Day, September 7, 1953, and allowed the incumbent of another clerical position at Plymouth, F-55, to perform the disputed work which consisted of delivering a shipment of freight and preparing the cashbook. F-52 is a five-day position with Saturdays and Sundays as rest days, while F-55 is a seven-day position with relief duty for the regular incumbent Sundays and Mondays.

It is first necessary to determine whether the disputed work belongs to Position F-52. Although the record indicates that F-55 incumbents are called upon to perform these duties at various times, the record as a whole is clear, and we find, that the duties of delivering freight and preparing the cashbook are part and parcel of the F-52 position and are normally, customarily and regularly performed by its incumbent during his five day workweek which begins on Mondays. The joint statement of facts, agreed upon by both the Petitioner and the Carrier, as well as the entire record attest to the foregoing and amply demonstrate that F-55 is essentially a Ticket Clerk's position, involving the selling of tickets and handling of telephone information to the public.

From our examination of the record, we are satisfied that, as a practical matter, the work that is the subject of this dispute belongs exclusively to the F-52 position from Mondays through Fridays and its incumbent is entitled to perform it during his work week. See Awards 7427, 7134, 5388, cf. 5972.

The Carrier contends that Rule 4-A-3 of the Agreement establishes its right to excuse the Claimant on Labor Day. This Rule provides as follows:

> "4-A-3. (Effective September 1, 1949) The working days per week for regularly assigned employes shall not be reduced below five unless agreed to by the Management and the General Chairman, except that this number may be reduced in a week in which holidays occur by the number of such holidays. This rule (4-A-3) does not prohibit the abolition of a position at any time."

It is certainly true that the Carrier has the right to suspend work on holidays without violating the weekly guarantee rules. The real question, however, is whether a position may be blanked on a holiday when some of the duties of that position must be performed on that holiday. In our opinion, that question must be resolved in the negative.

Rule 4-A-1 (i) of the Agreement provides:

> "(i) (Effective September 1, 1949) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

This rule is similar to Article II, Section 3 (i) of the Forty-Hour Work Week Agreement, effective, September 1, 1949. In its decision No. 2, the Forty-Hour Week Committee had that Section 3 (i) squarely before it and in that regard expressly ruled that

> "Where work is required to be performed on a holiday which is not a part of any assignment the regular employe shall be used."

In the present case, it is clear that Labor Day was not a part of the F-52 assignment and was therefore an unassigned day. It is not disputed that the employe who performed the work in dispute was a regular F-5-F relief employe and not an "extra" or "unassigned" employe. Accordingly, since we have found that Claimant was the regular employe charged with performing that work, it is apparent, under Rule 4-A-1 (i), that he was entitled to be called by the Carrier to handle it.

The Carrier points out that the disputed work consumed only twenty-five minutes of the F-55 incumbent's working day on the holiday in question. This argument has considerable emotional and "first blush" appeal but, in our opinion, does not bear careful scrutiny and analysis. The protection of job classifications is a legitimate concern of employe representatives and quite generally is one of the prime objectives of collective bargaining agreements. To permit such protection to be eroded by any encroachment, even those that appear to be trivial, might easily impair the Agreement and its effectiveness in stabilizing employe-management relations. See Award 7022.

The Carrier insists, however, that there has been no violation of the Agreement since it has the right to stagger the work in question inasmuch as both employes and positions involved are of the same class and craft, in the same seniority district. In this regard, the Carrier relies on Rule 5-E-1 (a) which provides that "the work weeks may be staggered in accordance with the Company's operational requirements." The difficulty with this argument is that the Carrier seeks to stagger a five-day position with a seven-day position. This cannot properly be done and the point is not tenable. See Awards 8286, 8531.

In the light of the foregoing discussion, we find that the disputed Labor Day duties represent work on an unassigned day which the Claimant should have been called in to perform under Rule 4-A-1 (i) since he was the regular employe and there is no showing that extra or unassigned employes were available. However, since the uncontradicted evidence establishes that only twenty-five minutes of working time was devoted to the Claimant's work on the 1953 Labor Day, we will allow pay not for eight hours, as requested by the Petitioner, but in accordance with the provisions of Rule 4-A-6 of the Agreement, which states that an employe called to perform work not continuous with his regular work period shall be paid a minimum of three hours for two hours work or less. See Awards 8344 and 5972.

**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 as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1958.