

Award No. 8750  
Docket No. CL-8217

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Lloyd H. Bailer, Referee

**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

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

(a) The Carrier violated the Agreement at its Atlanta, Georgia, Freight Agency when, on May 16 and 17, 1953, it utilized employe, Mr. J. B. Martin, to perform a part of the duties of a vacationing employe, and

(b) Claimant, Mr. W. R. Going, senior available, qualified employe, shall now be properly compensated at rate of time and one-half because of the Carrier's failure to allow him to work the position of the vacationing employe a full day on May 16 and 17, 1953.

**EMPLOYEES' STATEMENT OF FACTS:** On the dates encompassed in the claim, the position of Gang Foreman, Madison Avenue Freight Station, Atlanta, Georgia, was regularly assigned five days per week to Clerk H. J. Wallis. The rest days of the position were Saturday and Sunday. On Saturday and Sunday, the position was worked by relief assignment No. 2, regularly assigned to Clerk J. E. Hudson, Jr. On Saturday and Sunday, May 16 and 17, 1953, Relief Clerk, Mr. Hudson, was on vacation. The regular occupant of the position of Gang Foreman, Mr. H. K. Wallis, was, under Rule 28 (c), afforded an opportunity to work the two days. Mr. Wallis declined the proffered rest day work. Whereupon, the Carrier, instead of offering the two days' work to the senior qualified, available employe, Claimant W. R. Going, permitted or required Mr. J. B. Martin, Transfer Foreman, to work four hours each of the two days in question on an overtime basis, performing the duties of the Gang Foreman's position.

The Gang Foreman's position was assigned the hours of 8:30 A.M. to 5:30 P.M. Transfer Foreman Martin's assigned hours were from 6:30 A.M. to 3:30 P.M. Mr. Martin worked the Gang Foreman's position after his own assigned hours, for four hours, i.e., from 3:30 P.M. to 7:30 P.M. Mr. Martin, therefore, worked the Gang Foreman's position two hours within the regularly assigned hours of the position and two hours beyond the assigned hours of the position.

employee. It applies only when work is required and it is necessary to use a regularly assigned employee to fill the position at the time and one-half rate. In the latter event, the rule contemplates that the occupant of such position who is observing his rest day will be given preference. Agent Taylor decided to blank the position on the two days in question instead of using a regularly assigned employee on his rest days.

### SUMMARY

Carrier has shown that the gang foreman position was blanked (not filled) on Saturday and Sunday, May 16 and 17, 1953, and that the necessary supervision of the transfer operation was performed by Transfer Foreman Martin, who worked his regular hours and three hours' overtime on each date. The blanking of the position placed no burden on other employees or on the regular occupant after his return from vacation.

Carrier was under no contractual obligation to use claimant or any other regularly assigned employee on his rest days to work as gang foreman in the absence of the employee who was on vacation.

The evidence of record does not support the Brotherhood's claim that the agreement was violated. To the contrary, Carrier complied with the applicable provisions of the effective agreement and the vacation agreement. For the reasons set forth herein, the claim should be denied.

All pertinent facts and data used by the Carrier in this case have been made known to the employee representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** J. E. Hudson, Jr., who occupied Relief Position No. 2 at the Madison Avenue Freight Station, Atlanta, was on vacation on Saturday and Sunday, May 16 and 17, 1953. His relief assignment called for him to fill the position of Gang Foreman on those days, which were the rest days of the regular occupant, K. H. Wallis. The assigned hours of this position were 8:30 A.M. to 5:30 P.M. Also established at this station was the position of Transfer Foreman, with assigned hours 5:30 A.M. to 2:30 P.M. The regular incumbent of this position was J. B. Martin, whose rest days were Thursday and Friday.

In view of employee Hudson's vacation absence on the dates indicated above, Gang Foreman Wallis was offered the opportunity to work his position on his rest days, but he declined. The Carrier then had Transfer Foreman Martin work three hours beyond his regular hours, or until 5:30 P.M., on each of the days in question.

Claim was filed in behalf of Assistant Gang Foreman W. R. Going, regularly assigned at this location with hours of 8:30 A.M. to 5:30 P.M. and rest days on Saturday and Sunday. The contention is made that while the Carrier was not required to fill the Gang Foreman's position at all on the subject days, if it decided to fill the position it was obligated to fill it for a full eight hours. It is urged that the Transfer Foreman was not available to fill the Gang Foreman position for a full day, since he was working his own position, and that Carrier violated the Agreement by having the Transfer Foreman fill the Gang Foreman position for part of a day. It is asserted that the Claimant should have been assigned to the vacancy since he was available, these two dates being his rest days. The Claimant requests compensation at the overtime rate for a full day on May 16 and 17, 1953.

The Carrier responds that the Gang Foreman position was blanked and the work of supervising the platform and transfer operation on these two days was performed by the Transfer Foreman, who worked his regular assignment and three hours overtime per day. Management further states the work was such on May 16 and 17, 1953, that the Gang Foreman position was not needed or required. It also notes that the agreement provides (Rule 17) that a temporary vacancy may be blanked for all or any part of the period of the vacancy.

If, as the Carrier has stated, a Gang Foreman was not needed on the days in question, it is difficult to understand the reason for offering the regular Gang Foreman, employe Wallis, the opportunity to work on his rest days. Further, it would appear that the Transfer Foreman worked overtime on the two days only due to the absence of a Gang Foreman. It is clear from the record that the Transfer Foreman was used to fill the Gang Foreman's position for part of a day on May 16 and May 17. We do not interpret Rule 17 as permitting the blanking of a position for part of a day. If a temporary vacancy is blanked, no one works it. If it is filled, we are of the opinion that it must be filled for the entire day that would have been worked by the incumbent (of Relief Position No. 2) had he not been on vacation. Award 7034.

The claim must be sustained but at pro rata 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 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 violated the Agreement.

#### AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of March, 1959.

#### DISSENT TO AWARD NO. 8750, DOCKET NO. CL-8217

It is clear that Award 8750, in the first place, is the result of the majority's citing Award 7034 (Carter) but failing to apply it to the facts of record herein in the light of the agreement rules as written by the parties in the instant case, and, in the second place, is the result of the majority's exceeding the authority of this Board by reading a limitation or exception into Rule 17 which the parties, by clear and unambiguous language, indicated was neither intended nor provided for.

In Award 7034, *supra*, there was no dispute about the claimants therein having performed the duties of the vacant position on an overtime basis in addition to having worked their own assignments on the claim dates. In this respect, that Award countenances the propriety of using the Transfer Foreman on an overtime basis, who is senior to the Claimant herein. Accordingly, Award 7034 called for a denial of the instant claim. Furthermore, there was no rule in that case like Rule 17 in the instant case which gives this Carrier the right to blank a position "for all or any part of the period of the vacancy".

In the instant case, the record shows that, in describing the duties of the two positions, the Organization admitted that the Gang Foreman's supervision of the transfer is limited, and that the Transfer Foreman's duties, among other things, include the following:

"\* \* \* Works together with the Gang Foreman in making new cars to load outbound freight. Supervises entire operation of transfer \* \* \*."

The Carrier stated:

"The work on Saturday and Sunday, May 16 and 17, 1953, was such that the gang foreman position was not needed or required, and the operation was supervised by the transfer foreman. **Two foremen were not necessary.**" (Emphasis added.)

The record also contains the Organization's admission that the Transfer Foreman worked his own position during the eight hours of his regular shift. Its allegation that he performed duties of the Gang Foreman's position after his assigned hours is denied by the Carrier and is not supported by any evidence; in particular, there is no evidence that he performed any different duties after his assigned hours from those which he performed during his assigned hours.

In Award 4235 (Carter) we held:

"We adhere to the general principle that the amount of supervision to be employed in the performance of work is a matter which management alone may determine. This is so fundamental to the fixing of responsibility on management for the efficient operation of its railroad that to rule otherwise would operate to destroy the very responsibility with which management is charged."

There is no support for the majority's conclusion that Rule 17 does not permit the blanking of a position for part of a day. Rule 17 provides as follows:

"Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge." (Emphasis added.)

The phrase "any part of the period of the vacancy" is broad and all-inclusive language. It is without limitation and contains no exception providing for a minimum day or otherwise. We had no authority to read any limitation or exception into the Rule, or to assume that the parties performed a useless and vain act by including the phrase, *supra*, in the case of one-day vacancies like those in Award 7034.

For the reasons hereinbefore mentioned, among others, Award 8750 is in error and we dissent.

/s/ W. H. Castle

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp