

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

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

(a) Carrier violated the current Agreement, effective January 15, 1955, and supplements thereto, between the parties, when it failed to fill a short vacancy of one day on a yard clerk's position of more than thirty days' duration at East Yard, Detroit, Michigan, on May 8, 1955, and

(b) That Yard Clerk R. Burton shall now be paid a day's pay at the rate of time and one-half for not being called to fill the vacancy on May 8, 1955, and each subsequent date thereafter, until the condition is corrected.

JOINT STATEMENT OF FACTS: The yard clerk's position here in dispute is a permanent position in East Yard 12:00 Midnight to 8:00 A. M. Clerk C. Myszkier is assigned to this position from Friday through Tuesday, with rest days of Wednesday and Thursday. Relief Clerk D. A. Best is assigned to the position on the rest days of Myszkier. Myszkier was absent on Sunday, May 8, 1955. The position was not filled on that date, being blanked on instructions from Superintendent Terminals, Mr. Eddy.

Claimant Robert Burton is regularly assigned to a position of East Yard Clerk, hours 8:00 A. M. to 4:00 P. M., Wednesday through Sunday, rest days Monday and Tuesday.

The employees' claim was filed and handled up to and including the highest officer designated for that purpose without settlement being made. Copies of the exchanges of correspondence between the parties, and other correspondence, are attached hereto, identified as Exhibits Nos. 1 through 6, and by reference are made a part hereof.

"RULE 12 — SHORT VACANCIES

(a) New positions or vacancies of thirty (30) calendar days or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the third (30) day limit, they shall be immediately bulletined as provided in Rule 10."

Please note that this paragraph (a) only provides that a short vacancy "may be filled without bulletining". Short vacancies are, of course, not bulletined, therefore, the word "may" applies only to whether or not the vacancy is to be filled thus it follows that the carrier does have the option of either filling or not filling the vacancy. In Third Division Award 6142 the Board, in deciding an Illinois Central case, held that the words "may be filled" in the rule there involved permitted the carrier to temporarily fill a position but that it does not require that it do so. Accordingly, it is the contention of the carrier in the instant case that it could fill Myszkier's vacancy on May 8, 1955 but that it was not **required** to do so.

Carrier further points out that insofar as Claimant Burton is concerned, he worked and was paid 40 hours for his work week and that is all he is entitled to under Article 54(b) which is consistent with Article 50(a) of the Agreement which required the carrier to establish, effective September 1, 1949, for all employees, a work week of 40 hours. Here again there is an inconsistency on the part of the employees in asking that payment beyond the 40 hours be accorded to Burton.

All data contained herein have in substance been submitted to the employees and made a part of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented is whether the Carrier acted within its rights when in the face of a weekly guarantee contract provision, it blanked a yard clerk's position on Sunday, May 8, 1955, because of the absence of the regularly assigned employee for reasons of his own.

In considering the question it may first be noted that there is no rule in the 40-hour provisions of the Agreement which prohibits the blanking of a position when the occupant does not report to work because of illness or some other personal reason.

Secondly, we find that a number of prior Awards have considered the aforementioned question and resolved it in the negative. See Awards 1412, 5242, 5528, 5589, 5590, 6691, 7256 and 7591. If these Awards had concerned contract language substantially similar to that before us in the present case, there is no doubt that they would constitute persuasive authority on the point in issue.

We have before us in this matter, however, a quite different and— from all we have been able to gather—novel contract provision affecting the question. Rule 54 (b) of the controlling Agreement deals with the weekly guarantee point and provides as follows:

"Weekly Guarantee. Nothing herein shall be construed to permit the reduction of work days for employees and/or positions

covered by this agreement below five (5) per week, except that this number may be reduced in a week in which one of the holidays specified in Rule 53 (c) occurs within the five days constituting the work week, to the extent of such holiday. The guarantee herein provided shall apply only to regularly assigned employees and/or positions of more than thirty days duration."

This Rule is very specific on the matter of weekly guarantee and is not overbalanced by the terms and definitions of Rule 50 (the 40-hour week provisions) of the Agreement. Cf. Award 5555 and those Awards hereinabove cited which did not consider a specific rule substantially similar to Rule 54 (b). Under the plain and unambiguous language of this provision it is clear that the weekly guarantee is specifically extended to positions as well as to employees, as the words "or positions" attest. We understand that these words do not appear in weekly guarantee provisions of other contracts to which the Organization is a party and were not contained in its agreements with this Carrier until the current Agreement, effective January 15, 1955, was concluded.

The Position in question is over 30 days in duration, no holidays are involved and Rule 54 (b) is certainly applicable to this situation. This position is bulletined and calls for work on Friday through Tuesday with Wednesday and Thursday the assigned rest days. Blanking the position on Sunday reduced the prescribed working days of this position from five to four days. This is in contravention of the Agreement, in view of the plain language of Rule 54 (b), even if the regular rest days of the position were worked. This result is not inconsistent with the Awards cited by the Carrier, since those Awards considered substantially different contract language than is here concerned.

Rules 10 and 11 of the Agreement relate to bulletining and do not affect our findings in this matter. Rule 12 merely authorizes the Carrier to fill short vacancies without bulletining and while it does not itself obligate the Carrier to fill such vacancies, it does not detract from the commitment found in Rule 54 (b), the contract provision specifically having to do with the weekly guarantee problem.

Accordingly, subparagraph (a) of the claim will be sustained. As to subparagraph (b), we find no valid basis for the contention that Claimant is entitled to pay at the rate of time and one-half and for more than a single day. To the extent that Claimant is compensated at the regular rate of pay for one day, we will sustain subparagraph (b) of the claim.

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 Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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