Award No. 9257
Docket No. CL-8673

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Clerks' Agreement when it relieved Baggage Checker W. W. Tatum, a Class 1 employe, Passenger Station at Fort Worth, Texas, on his regular assigned rest day, Thursday of each week, with Mr. W. B. Bennett or Mr. R. A. Jones, regularly assigned to Class 2 positions of mailhandlers on dates herein specified; and

(2) That Mr. W. W. Tatum now be paid a day at time and one-half beginning May 12, 1955 and each Thursday thereafter until this claim is satisfactorily disposed of; and

(3) That Mr. W. B. Bennett or Mr. R. A. Jones be paid one day additional at the rate of pay of their regularly assigned position of mailhandlers for each Thursday beginning May 12, 1955, and each Thursday thereafter until this claim is disposed of, on which days they were required to suspend work on their regularly assigned positions of mailhandlers and relieve Baggage Checker W. W. Tatum.

EMPLOYES STATEMENT OF FACTS: Mr. W. W. Tatum, the claimant in the instant claim, is regularly assigned to position T-179, Baggage Checker, rate of pay $14.33 per day, assigned hours 4:00 P. M. to 12:00 midnight seven days per week with Wednesday and Thursday as rest days, having attained this position through the exercise of his seniority.

Mr. W. B. Bennett is regularly assigned to position T-1774, mailhandler, rate of pay $12.78 per day, assigned hours 3:00 P. M. to 11:30 P. M. seven days per week, with Tuesday and Wednesday as rest days. Mr. Bennett having attained this position through the exercise of his seniority.

Mr. R. A. Jones is regularly assigned to relief position of mailhandler, rate of pay $12.78 per day, assigned hours 3:00 P. M. to 11:30 P. M. seven days per week, with Tuesday and Wednesday as rest days. Mr. Jones having attained this position through the exercise of his seniority.

men in the two lower groups, who would like to make more money and train and qualify themselves for advancement. It allows those who have already made it, like Division Chairman H. H. Brian, to sharpshoot at will, but it tends to restrict the opportunities for advancement and increased earnings of those who have not made it yet. And it does this solely in order to try to give Claimant Tatum, and other potent insiders, who already have the best jobs, a chance to make overtime pay by working overtime or on their rest days, at punitive rates, on those same best jobs. In view of the fact that the Brotherhood failed, in Award 7191, to get the regular mail truckers (in Group 2) the right to work overtime, in preference to the right of extra mail truckers to work at all, it would seem that the Brotherhood ought at least to be willing for the same regular mail truckers to try to fulfill their more commendable aspirations to make Class 1 clerks out of themselves.

The net effect of the only contention that the Brotherhood can possibly make in this case is that we should save the chances at the best jobs in Group 1, for the very outsiders of whom the Group 2 mail truckers were complaining in Award 7191.

The Brotherhood contends, in effect, that we should not let the Group 2 mail truckers have the same chance at Group 1 work and Group 1 jobs that outsiders and floaters have.

Mr. Tatum's claim here is for overtime pay, for work not performed, on his own job on his own rest day. He contends we should have used him in addition to his regular assignment, at punitive rates, rather than allowing Mr. Jones and Mr. Bennett to vacate their Group 2 jobs for a day and work that day in Group 1 at straight time rates. This is the purpose which the Brotherhood seeks to achieve by impairing the rights of Mr. Jones and Mr. Bennett in this case.

There seems to be no limit to what the Brotherhood will contend, in an effort to collect overtime pay for certain politically potent favorites. For the benefit of the employes themselves, whose interests the Brotherhood is paid to represent, the Carrier requests the Board to deny this unjust claim.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of Carrier's position has been presented to the employes or duly authorized representatives thereof and made a part of the particular question in dispute.

OPINION OF BOARD: This controversy concerns the Carrier's use of two Class 2 employes to perform the work of a Class 1 position on one of the two rest days of that position.

Before considering the substantive question, it is necessary to pass upon Carrier's contention that Claim (3) in behalf of W. B. Bennett and R. A. Jones is barred because of procedural defects. An examination of the record clearly establishes that, with respect to that portion of the claim, Petitioner failed to comply with the plain and mandatory requirement of Article V, Section 1 (a) of the Chicago Agreement of August 21, 1954, that claims "must be presented in writing to the officer of the Carrier authorized to receive same within 60 days from the date of the occurrence on which the claim or grievance is based." No justification is perceived for this patent violation of an applicable agreement and Claim (3) in behalf of Bennett and Jones will be dismissed. See Award 8564.

Claims (1) and (2)—those filed in behalf of Tatum—have been duly processed and therefore shall be considered on their merits. Claimant Tatum is the incumbent of baggage checker T-179, a Class 1 position at Fort Worth, Texas, assigned to work Friday through Tuesday, from 4:00 P. M. to midnight, with Wednesday and Thursday rest days. While the Wednesday rest day was covered by a regular relief assignment, Thursday was not part of any assignment and at different times Bennett and Jones, two Class 2 mailhandlers, were used to perform the Thursday work. We have no doubt, and we find, that, at the times in question, Thursday was an unassigned work day, so far as the work of the Class 1 position under consideration is concerned.

The ultimate question to be resolved is whether, under the circumstances, this employment of Class 2 mailhandlers in a Class 1 position is incompatible with Rule 30 (f)—the unassigned work day rule—of the controlling Agreement.

Rule 30 (f), which came into existence as part of the Forty Hour Week Agreement, reads as follows:

"Work on Unassigned Days

> "Where work is required by the carrier to be porformed on a day which is not 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 assigned that class of work."

This provision is clear and unambiguous and therefore requires no evidence of past practice or custom to interpret its language. It permits use on an "unassigned" day of an employe who is unassigned, available and will otherwise not have 40 hours of work that week. The record is clear that Bennett and Jones were regularly assigned to Class 2 positions on a 40 hour per week basis at the times they were called upon to perform the Thursday Class 1 work. In order to accept that work, which extended from 4:00 P. M. to midnight, they were required to abandon their regularly assigned Class 2 positions well before 11:30 P. M., the expiration of their assigned hours. Thursday was not one of the rest days of Bennett and Jones' Class 2 positions.

To hold Bennett and Jones "unassigned" and "available" in this factual situation would, in our opinion, distort and do violence to the plain and ordinary meaning of the language contained in Rule 30 (f). As it now stands and in the absence of added language, Rule 30 (f) contains no intimation or fair inference that "unassigned" and "available" employes include those who are regularly assigned to Class 2 so long as they are not assigned to Class 1 positions. As we have had prior occasion to point out, this Board is not disposed to resort to fiction, strained interpretation or the addition of qualifying language in reaching a result. See Award 8564.

It is accordingly our view that, under the circumstances of this case, the Class 2 employes in question were neither "unassigned" nor "available" within the meaning of Rule 30 (f). See Awards 8303, 8306 and 8311, as well as 7827, 5708 and 3875.

It is to be noted that here, unlike the situation considered in Award 5629, both the Class 1 and Class 2 workers covered by the same collective bargaining agreement. In any event, while some conflict of opinion regarding the point in issue may exist, we believe that the better reasoned and more logical view is expressed in Award 8303 and we percieve no valid reason for upsetting it.

This Referee subscribes to the principle emphasized by the Carrier that it is not bound to pay the overtime rate for work if it can be performed at the straight time rate, but this must be accomplished within the framework of the applicable agreement; in the present case, the use of regularly assigned and unavailable Class 2 employes exceeded the limitations prescribed by Rule 30 (f).

In view of the foregoing considerations, Claims (1) and (2) will be sustained.

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 to the extent indicated in the Opinion.

AWARD

Claims (1) and (2) sustained. Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.