

Award No. 9636

Docket No. CL-9023

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

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

1. Carrier violated the Agreement when on Saturday, September 10, 1955, it utilized the services of Station Attendant Clifford Hahn for a full eight hour day after he had worked forty hours from Sunday, September 4 through Thursday, September 8, 1955, inclusive, and failed and refused to compensate him at the punitive rate of Assistant Station Master position he worked on Saturday, September 10, 1955, and

2. That Clifford Hahn shall now be compensated for the difference between straight time rate he was paid and punitive rate for eight hours worked on Saturday, September 10, 1955.

EMPLOYEES' STATEMENT OF FACTS: Clifford Hahn was regularly assigned to Position No. 9, Station Attendant, hours 4:30 P. M. to 1:00 A. M., with rest days of Friday and Saturday, at Cincinnati, Ohio. He worked his regular assignment as Station Attendant from Sunday, September 4 to Thursday, September 8, 1955, inclusive. He was called to work on rest day, Saturday, September 10, 1955, as Assistant Station Master for a full 8 hour day and was compensated at the pro rata rate of the Station Master position.

The claim was handled in the usual manner up to and including the highest officer of the Carrier for that purpose, without settlement being made.

POSITION OF EMPLOYEES: There is in evidence an Agreement between the parties bearing effective date of July 1, 1946, amended September 1, 1949 and amended February 1, 1956, containing the following Rules which are quoted in whole or in part:

"RULE 1 — SCOPE — EMPLOYES AFFECTED.

(a) These rules shall constitute an agreement between the Cincinnati Union Terminal Company and that class of employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers,

The Carrier certainly has the right under the rules of the agreement to have the work performed at straight time rate; therefore claim is without merit and should be denied by your Honorable Board.

All relevant facts and data involved in this dispute have heretofore been made known to employe representatives.

OPINION OF BOARD: Claimant worked his regular assignment as Station Attendant from Sunday through Thursday. On Saturday, his second assigned rest day, he was called to fill a vacancy in an Assistant Station Master's position, for which he received pay at its pro rata rate. The claim is for the difference between the rate and time and one-half for his rest day work.

Under the heading "Exceptions" to Rule 1—Scope, the position of Assistant Station Master, which is included in Seniority Group 1, is expressly excepted from the application of Rule 13—Bidding and Assignment, and is to be "filled by the proper officers," although "employes within the clerical class will be given preferred consideration as against non-employes".

Rule 28—Overtime, section (c) provides:

"Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (g) of Rule 27½."

The work performed by Claimant on Saturday was not "due to moving from one assignment to another", since he was filling a purely temporary assignment because of the illness of its occupant, and returned to his own position when the latter was able to resume work. He was not promoted or moved to a new assignment. The position is not subject to Rule 13—Bidding and Assignment, and the Carrier was not obligated to place him in it. Clearly none of the other exceptions specified in Rule 28 is applicable to this case.

Awards of this Division, many of them somewhat different in circumstances, but all nevertheless analogous in principle, are Awards 5113, 5421, 5464, 5494, 5495, 5805, 5873, 6382, 6440, 6479, 6504, 6970, 6971, 6973, 8009, 8395, 8527 and 8897. Those awards and what we consider the clear intent of Rule 28 require the sustaining of this 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 Employe involved in this dispute are respectively Carrier and Employe 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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 17th day of November, 1960.