

Award No. 11039

Docket No. CL-10629

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. The Carrier violated the Clerks' Rules Agreement when it failed to call the regularly assigned relief employee for overtime work occurring in the sub-division.

2. The Carrier shall now be required to compensate Employee H. Vannoy, Ottumwa, Iowa, at the overtime rate of Yard Clerk Position #3 for eight (8) hours on each of the following days: August 2 and 3, 1957.

EMPLOYEES' STATEMENT OF FACTS: Employee H. Vannoy is regularly assigned to Relief Yard Clerk Position #16 at Ottumwa, Iowa. His work week is Sunday through Thursday on the following positions requiring 7-day service:

Pos. No.	Hours	Day
12	6 A. M. to 2 P. M.	Sunday
12	6 A. M. to 2 P. M.	Monday
4	2 P. M. to 10 P. M.	Tuesday
3	10 P. M. to 6 A. M.	Wednesday
3	10 P. M. to 6 A. M.	Thursday

His regularly assigned rest days are Friday and Saturday. Employee H. Vannoy's seniority date in Seniority District #32 is July 13, 1948.

Employee R. Hall has a seniority date of April 2, 1956 in Seniority District #32 and is a furloughed employee in that district.

From July 15 through August 4, 1957, Employee R. Hall was assigned from the furloughed list to fill Position #111, which was temporarily

at the straight time rate of pay applied to August 2, 1957 in disposition of this claim but the offer of the Carrier in that regard was refused. Please see Mr. Downing's letter of July 30, 1958 (Carrier's Exhibit "C"). There is attached as Carrier's Exhibit "D" copy of letter written by Mr. H. V. Gilligan, General Chairman, August 4, 1958 to Mr. Downing declining the proposed settlement.

We submit that if there is any basis for the contention that the overtime rate should have applied to employe Hall on Position 3 on August 2, 1957, the circumstances in existence on that day were not in existence on the following day and the Carrier maintains that there is no basis whatever for the contention that employe Vannoy should have been called on the basis of the overtime rule to perform vacation relief work on the 5-day vacation vacancy on August 3, 1957, rather than use vacation relief employe Hall.

There is no basis for this claim. There has been no violation of the rules. The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant held a regularly assigned relief position Sunday thru Thursday with Friday and Saturday as rest days. The Yard Clerk position No. 3 was one of the positions he relieved. On Friday, August 2, 1957, the occupant of position No. 3 started his scheduled vacation. The Claimant advised the Chief Clerk that he would be available to fill Position No. 3 on Friday and Saturday, August 2 and 3, such days being Claimants' rest days. The Carrier, however, placed employe Hall on the vacation vacancy. Hall, a furloughed employe, was junior to Claimant. Prior to filling the vacation vacancy on Position 3, Hall had filled Position No. 111 during the regular employe's vacation. Position No. 111 was worked Monday thru Friday with rest days Saturday and Sunday. Hall worked Position No. 111 on Friday, August 2, 8:00 A. M. to 5:00 P. M. and went onto Position No. 3 at 10:00 P. M. the same day. He was paid pro rata rates.

The claim is premised on the theory that the work performed on Position 3 on August 2 and 3 was overtime work and under the provisions of Memo No. 9 the Claimant, being senior, should have been called. It is admitted that using Hall on a second shift within a 24 hour period the work would necessarily be at the overtime rate, and being such the Claimant should have been used. If the work would, under the rules, be performed at the overtime rate on August 3 by either Hall or the Claimant, then the Claimant being senior, should have been called.

August 3 and 4 were the rest days of Position No. 111. It is the contention of the Carrier that when furloughed employe Hall finished the last work day (August 2) of the vacation vacancy that he had been filling, his status reverted to that of a furloughed employe and when he moved to Position No. 3 to cover the vacation vacancy he was not entitled to overtime by reason of the exception in 32(c). The Organization contends that August 3 and 4 were the rest days of Position 111 and Hall did not revert to a furlough status until the expiration of the work week. [Rule 27(h)]. This rule provides that if a furloughed employe takes the

assignment of a regular employee they will have as their days off the regular days of that assignment. This rule applies here, and August 3 was one of employee Hall's rest days. Thus when he worked Position 3 on Saturday, August 3, Rule 33(c) became applicable.

It is admitted that if employee Hall had been available to perform the vacation relief work on Position 3 at straight time rates the Claimant Vannoy would not have a claim; but having concluded that the punitive rate would apply to either Hall or Claimant on August 2 and 3, then Claimant, being senior, should have been used. The claim is, therefore, valid at the pro rata rates for August 2 and 3, 1957.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.