

Award No. 12428
Docket No. CL-11961

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) Carrier violated the terms of the current agreement between the parties at Kansas City, Missouri on February 2, 1959 when it required Mr. J. C. Carlson to perform service on his rest day, compensating him only at the pro rata rate of pay, and failed to permit Mr. W. G. Hansen, a senior employee, to perform the required service.

(2) Mr. J. C. Carlson shall now be allowed the difference between pro rata and time and one-half for service performed on February 2, 1959.

(3) Mr. W. G. Hansen shall now be allowed one day's pay at the rate of Position No. 15 for February 2, 1959.

EMPLOYEES' STATEMENT OF FACTS: Extra Clerk J. C. Carlson was assigned to fill a short vacancy on Yard Clerk Position No. 28 pending assignment by bulletin on January 28, 1959 and continued to occupy that position up to and including February 17.

Due to illness, J. W. Hansen laid off on February 2, 1960. There being no other available extra clerks to work on this position No. 15, it became a penalty day or overtime day to be worked by the senior available employee who occupied a regular position, at overtime rate. The senior regular employee who desired to fill Position 15 on that date was Mr. W. G. Hansen with seniority from March 12, 1947, but the Carrier used Mr. J. C. Carlson with seniority from July 25, 1958 on his rest day. Carrier compensated Mr. Carlson at the pro rata rate for service performed on his rest day.

The series of events which brought about this situation is as follows:

Prior to January 16, 1959, J. W. Hansen was permanently assigned to Position No. 28. On January 16, 1959, he moved to permanent assignment on Position No. 15 as a result of Bulletin No. 1981. (See Employees' Exhibit 1-A and 1-B). On February 2, 1959, the date subject to claim, he laid off.

ther was the Claimant 'the regular employe' within the meaning of Rule 57 (f). The 'regular employe' was the occupant of the Steno-Ticket Clerk position; therefore, since claim for reparations is brought in the name of the wrong claimant the claim for compensation will be dismissed."

Also see Award 6893, 6946, and 7082.

After reviewing the principles handed down in the aforementioned awards, there should be no doubt that Claimant Hansen is the wrongful claimant in this dispute and the claim in his behalf should be denied.

In view of all the facts and circumstances surrounding the instant dispute, the claims of the Employes should be denied and the Carrier respectfully requests this Board to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Carlson, an extra clerk, was assigned to fill a short vacancy on Yard Clerk Position No. 28 pending assignment by bulletin. This position was assigned to work Tuesday through Saturday with rest days Sunday and Monday when relief was afforded by Position No. 15.

Claimant Carlson began working Position No. 28 on Wednesday, January 28, 1959 and worked through Saturday the 31st. Sunday and Monday, February 1 and 2 were rest days. Claimant rested on Sunday. On Monday, Carrier caused Claimant to work Position No. 15; then, the following day, Tuesday, February 3, he continued in the assignment to Position No. 28 which he worked through February 16.

For his work on February 2—a rest day of Position No. 28—Claimant Carlson was paid pro rata rate. Petitioner claims that having worked a rest day of Position No. 28 to which he was assigned, Claimant qualified for time and one-half rate. It cites Rule 36½(h) for establishing that while Claimant was assigned to Position No. 28 he was required to honor, and the Carrier to recognize, the work and rest days of that Position. The Rule reads:

"Rest Days of Extra or Furloughed Employes.

To the extent extra or furloughed employes may be utilized under applicable agreements or practices, their days off need not be consecutive; however, if they take the assignment of a regular employe they will have as their days off the regular days of that assignment." (Emphasis ours.)

Carrier argues that Claimant was, in accordance with an established practice acquiesced in by Petitioner, assigned to Position No. 28 on a day-to-day basis. The argument is not supported by clear and convincing evidence of record.

We find that; (1) during the period from January 28 through February 16, Claimant Carlson's rights and entitlements were those attached to Position No. 28; (2) Monday, February 2, was a rest day for Claimant; and (3) having been required to work on a rest day, Claimant was entitled to be paid the time and one-half rate for that day. We will sustain the claim as to Claimant Carlson.

With reference to Claimant Hansen the claim avers that he, not Claimant Carlson, was entitled to work Position No. 15 on Monday, February 2. Hansen was a regular employe senior to Carlson who was an extra clerk.

In handling the claim on the property, Petitioner stated its case re: Claimant Hansen:

"Since Mr. W. G. Hansen was the senior regular man, he was entitled to have performed the work on Position No. 15 on February 2, account there being no other available extra employes who would otherwise have less than 40 hours in their work weeks."

Petitioner failed to adduce evidence that there were "no other available extra employes." Proof of the averment being indispensable to Petitioner's case, we will dismiss the claim as to Claimant Hansen.

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 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 Carrier violated the Agreement as to Claimant Carlson; but, not as to Claimant Hansen.

AWARD

Claim sustained in part and denied in part, as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.