Award No. 12692
Docket No. CL-12087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) Carrier violated the Rules of the Clerks' Agreement at Sacramento, California, District Timekeeping Bureau, when it used Tommie L. Robinson as Tabulating Machine Operator on Saturday, April 4, 1959, and failed and refused to compensate her at the rate of time and one-half; and,

(b) That Tommie L. Robinson shall now be compensated at the rate of time and one-half for service performed on Saturday, April 4, 1959, in lieu of pro rata compensation allowed.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. The Carrier maintains a District Timekeeping Bureau at Sacramento, California, where employes covered by the Agreement are engaged in accumulating and preparing timekeeping, payroll and certain other related data. Specific position classifications, such as Timekeeper, Control Clerk, Machine Operator and others of the like with agreed-to rates of pay are established with assigned hours from 7:50 A. M., to 4:30 P. M., on a Monday through Friday, five (5) day, basis to perform the usual and normal requirements. During payroll periods which occur twice monthly, commencing on the 1st and 16th of each month, there is a need for additional employes to assist the regular force so that payroll vouchers will be dispatched and delivered at locations where employes work sufficiently in advance of paydays in accordance with applicable State Laws. This necessitates the establishment of additional positions with the same assigned hours classified as Key Punch

OPINION OF BOARD: Tommie L. Robinson, an unassigned employe, was employed by the Carrier to assist regular employes on April 1, 2, and 3. Further she was assigned to fill in for a machine operator on Saturday, April 4, 1959. She was compensated for the time worked on Saturday, but now claims that she should have been compensated at the rate of time and one-half.

The Claimant contends that she was filling a new position which was created and that she is entitled to the rest days assigned to such new position, namely Saturday and Sunday, and that she should be compensated at the time and one-half rate for work on Saturday. In support of her contention, claimant cites Rule 34 which reads as follows:

> "(a) New positions and/or vacancies of thirty (30) calendar days or less duration, may be filled without being advertised, at the option of the employing officer. New positions and/or vacancies of doubtful duration, need not be advertised until the expiration of thirty (30) calendar days, in connection with which, so far as practicable, the approximate duration of the work will be given.
>
> NOTE: Subject to (b) and (c) of this rule.
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> (b) New positions or vacancies of thirty (30) calendar days or less duration, shall be filled, whenever possible, by the senior qualified unassigned employe who is available and who has not performed eight (8) hours work on a calendar day; an unassigned employe will not be considered as being available to perform further work on vacancies after having performed five (5) days or forty (40) hours of work at the straight time rate in a work week beginning with Monday, except when such unassigned employe secures an assigned position under the provisions of Rule 33 or returns to the extra list from a position to which he was assigned, in which event he shall be compensated as provided for in Rule 20, Sections (b) and (c).
>
> NOTE: 1. An unassigned employe placed on a vacancy or a new position having rest days of Saturday and Sunday will remain thereon until relieved by regular employe or displaced by a senior unassigned employe."

Claimant contends that Note 1 of such rule clearly indicates that all new positions shall have established rest days. Further, Claimant also cites Rule 9(h), which provides:

> "(h) Rest Days of Extra Unassigned Employes—
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> To the extent extra unassigned employes may be utilized under this agreement, 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 off of that assignment."

This rule is cited in support of the proposition that Claimant had assigned rest days of Saturday and Sunday.

The Carrier denies that it created a new position with assigned rest days when it employed Claimant. It contends that it merely assigned an unassigned employe to do extra, seasonal work rather than filling a short vacancy or creating a new relief position. It points out that Rule 34 applies only to new positions or vacancies which will be relieved by regular employes. It argues that

the work involved here will not be assumed by a regular employe and that rule 34 is not applicable. A close reading of Rule 34 and Note 1 thereunder compels us to agree that it does not apply to the seasonal work being performed by Claimant in this case.

Carrier further points out that Rule 9(h) is equally inapplicable in this case. It asserts that such rule deals with employes who take the assignment of regular employes, which is not the case involved here. Inasmuch as claimant did not take the assignment of a regular employe, but was admittedly only performing seasonal work of a short duration, we hold that she had no assigned rest days.

From a thorough reading of Rule 34 (a) and (b) it would appear that the parties intended to allow Carrier to handle extra work for short periods without the formality of establishing regular positions. Certainly, such rule does not intend to take away this prerogative.

In Award 12326 (Seff) this Board held that an employe temporarily recalled to service for seasonal work was performing extra work, rather than filling a regular position. We think that a holding that Claimant was filling a regular position in this case would be inconsistent with that Award. We decline to do so.

In Award 6968 (Carter) this Board held that extra employes (such as Claimant here) are assigned to no positions of their own and have no regular assigned work week. Inasmuch as Claimant has not been shown to have an assigned rest day, the work which she performed on Saturday does not constitute work on an assigned work day. The compensation paid was therefore proper.

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 the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1964.