

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

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

(a) Carrier violated the Agreement at Chattanooga, Tennessee, when it improperly assigned Clerk P. R. McNabb to work the "North End Pull Out Job" on Saturday, July 16, 1960 as he was not available for this position on that day since he was filling a regular assignment of "City Clerk", work week Tuesday through Saturday with rest days on Sunday and Monday;

(b) Yard Clerk C. A. Rabun shall now be compensated for eight hours at rate of time and one-half for Saturday, July 16, 1960.

EMPLOYEES' STATEMENT OF FACTS:

1. C. A. Rabun, with seniority date of January 19, 1950 is regularly assigned to position of Yard Clerk at Chattanooga, Tenn., hours 3:00 P.M.-11:00 P.M., work week Monday through Friday, rest days Saturday and Sunday.

2. P. R. McNabb was filling position of "City Clerk" during the absence of the regular occupant John L. Davis, who was away account of illness. The hours of this position were 6:30 A.M.-3:00 P.M., work week Tuesday through Saturday, rest days Sunday and Monday. Bulletin No. 14 was posted on July 16, 1960 abolishing the "City Clerk" position "effective with termination of assignment Monday, July 18, 1960." (Employees' Exhibit A).

3. On Saturday, July 16, 1960 there were two vacancies to fill—the "North End Pull Out Job" and that of "Ditto Clerk", both positions having assigned hours of 3:00 P.M.-11:00 P.M. Extra Board Clerk G. S. Hughes who had requested to be assigned to the "North End Pull Out Job" was advised at 2:15 P.M., July 16, 1960 by the Chief Clerk that he would have to work the "Ditto Clerk" job instead, as the Extra Board had been exhausted and there was no one available for the "Ditto Clerk" position.

time and one-half rate if used after 3:00 P.M. on that date or on the July 17 or 18 rest days of Mr. Davis' position. There can be no question as to whether or not Mr. McNabb was available for service at 3:00 P.M. on July 16 because he was actually used at that time, and was properly compensated at the time and one-half rate for service performed.

In effect, petitioner is erroneously alleging in this dispute that regularly assigned clerks must be used in preference to extra board clerks when it is necessary to fill temporary vacancies at the time and one-half rate. Such contention is contrary to the provisions of the agreement. There are a number of examples listed in carrier's Exhibit B showing where extra clerks are entitled to receive the time and one-half rate of pay for work performed.

The evidence of record does not support petitioner's claim that the agreement was violated or that claimant should have been used on the temporary vacancy in question. For the reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: In this claim, an extra board employe, P. R. McNabb, was filling the position of "City Clerk" in the absence of John L. Davis, the regular employe who was ill. The position was from Tuesday through Saturday, 6:30 A.M. to 3:00 P.M., with rest days Sunday and Monday.

On Saturday, July 16, 1960 Carrier notified all clerks that the position of City Clerk was abolished, "effective with termination of assignment Monday, July 18, 1960".

Also on Saturday, July 16, 1960 Carrier had to fill two vacancies during the assigned hours of 3:00 P.M. to 11:00 P.M. The one vacancy, that of "Ditto Clerk" was filled by extra board clerk G. S. Hughes.

When P. R. McNabb completed his work week at 3:00 P.M., Saturday, July 16, 1960, Carrier returned him to the extra board and thereafter assigned him to the other vacancy, that of "North End Pull Out Job".

Employes contend that McNabb had worked 40 hours on the City Clerk's position and should have been required to observe the rest days of that position. They argue further that the assignment was not terminated until 3:00 P.M., Monday, July 18, 1960, and that McNabb should not have been returned to the extra board until that time, which would have been after the expiration of the work week and the rest days.

Carrier contends that McNabb's job ended at 3:00 P.M., Saturday, and therefore his assignment to the extra board was proper. They argue that since the position was to be abolished on Monday, and a relief clerk was to work on Sunday and Monday, McNabb's last day on the job was Saturday, and he should have been returned to the extra board at that time.

It is an accepted practice that once a person on the extra board elects to fill a position, he must observe the rest days of that position. This opinion should not be considered as affecting that premise in any manner.

The question involved in this claim, is what was McNabb's status at 3:00 P. M., Saturday, July 16, 1960? If in fact he was relieved of his assignment and could therefore be returned to the extra board, the claim should be denied. But, if it were to be found that he was not in fact relieved of his assignment, and must therefore observe the rest days, his return to the extra board would be void and the claim would be sustained.

Carrier issued a bulletin on July 16, 1960, abolishing the "City Clerk" position "effective with termination of assignment Monday, July 18, 1960". Sunday and Monday were the rest days of the position and a relief clerk was to work on those days. As a result, in view of the termination of the position, Saturday was the last day McNabb would work on the assignment. Therefore, as far as he was to be concerned, Saturday would effectively constitute the termination of his assignment.

Under the rules, McNabb was eligible to return to the extra board at the expiration of his assignment, which in this case, would have been Saturday, July 16, 1960. Since this is what the Carrier actually did, we can find no violation of the Agreement.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.