Award No. 13216
Docket No. CL-12900

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 (GL-4981) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily deducted eight hours' compensation from the wages of Mary E. Brown, Key Punch and Verifier Operator, District Timekeeping Bureau, Sacramento, California, contrary to the provisions of Rule 66 thereof; and,

(b) Carrier shall be required to compensate Mary E. Brown eight hours' compensation at the rate of Key Punch and Verifier Operator for February 8, 1960.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) 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 (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. 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 related data. Specific positions such as Timekeeper, Control Clerk Machine Operator, etc., are established on a regular five-day basis Monday through Friday to take care of the normal requirements of the District Timekeeping Bureau (hereinafter referred to as the Bureau). Payroll periods occur bi-monthly, commencing on the first and the sixteenth days of each month. During these periods it is necessary to augment the regular force so that payroll vouchers will be dispatched at locations where employes work sufficiently in advance of paydays in accordance with applicable State Laws. The Bureau performs the involved work for the Sacramento, Shasta, Portland and Salt Lake Divisions, which Divisions are located in the states of California, Oregon and Utah. This necessitates the establishment of additional positions with the same assigned hours of the regular positions, which positions are classified as Key Punch and

agreement of the representatives of the carrier and of the employes."

was not proper as the wording appearing in this rule reading "Where the work of any employe is kept up by other employes . . ." is not applicable to an employe who does not have an assigned status, in other words a regular position to latch to that was blanked and work kept up by other employes at no additional cost to carrier, which in the instant case no such position existed.

While it is a fact that extra positions of key punch and verifier are used to assist in expediting the pay roll at the close of each period and that the claimant in the case was notified on Friday, February 5, 1960, that there would be work available on Monday, February 8, 1960, the carrier is not prohibited by any provision of the current agreement from governing the number of extra positions required on a given day. In the instant case the claimant did not report for the extra work account illness, at which time the carrier determined that only two extra positions would be required instead of the three originally intended on February 8, 1960. Such determination was substantiated by the fact that the pay roll was closed early at about 2:00 P. M. on that date, and clearly establishes that there was no work required to be kept up by other employes and no work was performed which would have required utilization of a third extra position of key punch and verifier operator on date involved.

Carrier, rather than utilize a third extra position and call in a third extra employe following claimant Brown's reporting ill, determined, as described in preceding paragraph, that only two extra positions would be required on date of this claim and that a saving could be enjoyed by carrier, and that saving was reserved to carrier rather than payment of sick time compensation to the claimant for a non-existent position.

CONCLUSION: The claim in this docket is entirely lacking in either merit or agreement support and carrier requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: At the time of this dispute, Claimant was an unassigned employe subject to call for punch and verifier operator work. On Friday, January 29, 1960, Claimant was notified to report for duty on Monday, February 1, 1960, to augment the regular force during the payroll closeout period. She was assigned to Extra Authority Punch and Verifier Position No. 581 and performed service thereon Monday through Friday, February 1, 2, 3, 4, and 5. Saturday and Sunday, February 6 and 7, were rest days. Prior to her assigned starting time on Monday morning, February 8, 1960, Claimant reported ill and was unable to protect her assignment on that day. Her position was not filled. Carrier made deduction from her pay for such absence, which gave rise to this claim.

Rule 66 of the Agreement is applicable and controlling here. It reads, in pertinent part, as follows:

> Where the work of an employe is kept up by other employes without cost to the Carrier, a clerk who has been in the continuous service of the Carrier one year and less than two years, will not have deduction made from his pay for time absent on account of bona-fide case of sickness until he has been absent five (5) working days in the calendar year; a clerk who has been in continuous service for two years and less than three years, seven and one-half (7½) working days; a clerk who has been in continuous service three years or longer,

ten (10) working days. Deductions will be made beyond the time allowance specified above."

The sole issue here is whether, under the provisions of the controlling rule quoted above, the Carrier properly deducted a day's pay from Claimant's wages on February 8, 1960.

The Board finds such deduction was improper. Rule 66 (supra) imposes only two conditions applicable here: First, that the work of the absent employe be "kept up" by other employes with no cost to the Carrier; second that the employe must have been in the "continuous service" of the Carrier for at least one year. It makes no distinction between regular and extra employes; it does not exclude, either expressly or impliedly, those employes filling temporary vacancies or new positions under Rule 34 or those used under the provisions of Rule 20(e). The rule language employed is clear and unambiguous; thus "any employe" and "a clerk", obviously mean any person employed by the Carrier who is covered by the Clerks' Agreement.

The can be no dispute that Claimant was an employe of this Carrier and that she was covered by the Clerks' Agreement. No question was posed on the property about the length and continuity of her service with the Carrier and it may not, therefore, now be raised at this level of appeal. The Carrier did, however, attempt to show that the work of Claimant on February 8, 1960, was not "kept up" by other employes because the payroll work was closed early at 2:00 P. M. and that Carrier had determined it was unnecessary to have more than two employes working on that date; that the resultant "saving" could be reserved to and enjoyed by carrier rather than paying sick time compensation to Claimant.

The facts do not support Carrier contention. It concedes that Claimant was scheduled to work her position on February 8. Extra Position No. 581 had not been abolished and the work assigned thereto remained to be performed, and would have been performed, by Claimant had she been able to report for duty. It must also be conceded that the work was done by her fellow employes without additional cost to the Carrier under its own admission of record.

In view of the foregoing, it would serve no useful purpose to dismiss the other points argued at some length by the representatives of the parties.

It cannot, however, be successfully argued that Claimant held no assignment or that because she was an extra unassigned employe filling a temporary position, she was ineligible to receive the benefits of Rule 66. As has been said, that rule makes no such distinction. So long as an employe can qualify under the requirements and conditions precedent expressly set forth therein, there is no other contract bar to his receiving the benefits granted thereby. The Board finds on the evidence of record that Claimant qualified under Rule 66 and, therefore, should have been paid.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1965.