

Award No. 13444
Docket No. CL-12567

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-4954) that:

(a) The Carrier violated the current Clerks' Agreement when J. O. Walker, a regularly assigned laborer was used to perform unassigned work on the Warehouse Foreman's position at the Parsons, Kansas, Freight House, on Saturday, July 2, and Sunday, July 3, 1960, on his regularly assigned rest days.

(b) C. J. Forbes assigned to position of Warehouse Foreman be paid a day's pay at the time and one-half rate at the Warehouse Foreman's daily rate of pay for each day, Saturday, July 2 and Sunday, July 3, 1960.

EMPLOYEES' STATEMENT OF FACTS: During the work week of which Saturday, July 2 and Sunday, July 3, 1960, were a part the following positions were in existence at the Parsons Freight Station:

| Position | Work Week | Hours of Assignment | Occupant |
|----------------------|---|--------------------------------|-----------------|
| Warehouse Foreman | Mon. to Fri. Rest Days Sat. & Sun. | 8:00 AM to 5:00 PM | C. J. Forbes |
| Laborer | Sun. to Thurs. Rest Days Fri. & Sat. | 11:30 PM to 8:30 AM | S. M. Lawrence |
| Laborer | Mon. to Fri. Rest Days Sat. & Sun. | 12:01 AM to 9:01 AM | F. H. Bolinger |
| Laborer | Mon. to Fri. Rest Days Sat. & Sun. | 9:30 AM to 6:30 PM | J. O. Walker |
| Laborer | Mon. to Fri. Rest Days Sat. & Sun. | 8:00 AM to 5:00 PM | J. L. Gannaway |
| Laborer | Mon. to Fri. Rest Days Sat. & Sun. | 8:00 AM to 5:00 PM | E. M. Gannaway |

Carrier respectfully submits that the understanding had with former General Chairman Pickett clearly sets out in writing the status of furloughed Group 1 employes and that this understanding is, until changed in the manner provided in the amended Railway Labor Act, as much a part of the Agreement as is Rule 51 (e) itself; furthermore, that the application of Rule 51 (e) (which was effective September 1, 1949) is clearly and definitely restricted by the agreed understanding, in writing, dated April 24, 1957, and that Carrier's action in this instant case was precisely in accord with that agreed understanding and not in violation thereof.

The Carrier respectfully requests the Third Division to decline to be a party to this effort on the part of the Organization to abrogate the written understanding which the Organization itself sought, and to deny this alleged claim in its entirety.

Except as expressly admitted herein, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the Organization and Employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons the Missouri-Kansas-Texas Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: J. O. Walker was regularly assigned as Laborer, a Group 3 position, 9:30 A.M. to 6:30 P.M., Monday through Friday at the Parsons, Kansas, Freight House.

There was also a Warehouse Foreman position, a Group 1 position, Monday through Friday, to which C. J. Forbes was regularly assigned.

On Thursday and Friday, June 30 and July 1, 1960, Walker did not work his regularly assigned position. On Saturday and Sunday, July 2 and 3, he worked the Warehouse Foreman position. The Organization claims this to have been a violation of Rule 51 (e) which reads as follows:

“(e) Work on Unassigned Days —

Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.”

It is conceded that the Warehouse Foreman's work on July 2 and 3 was unassigned work and that Rule 51 (e) applies. It is the Organization's claim, however, that Walker was neither “extra” nor “unassigned” and hence ineligible to perform the unassigned work. It charges that Carrier required Walker to lay off Thursday and Friday in order to have a short week and qualify under Rule 51 (e). Carrier denied this assertion and the record contains no evidence to support it. The Organization's statement is mere assertion and not proof and must therefore be disregarded. Award 12298.

Carrier asserts that Walker had seniority on Group 1 positions and upon being furloughed from his Group 3 position was “extra” and “unassigned” and would not otherwise have 40 hours work that week.

The Organization argues, however, that Walker cannot be deemed unassigned to a Group 1 position while he is assigned to a Group 3 position. Carrier made such an assertion and based it on the position taken by the then General Chairman in an earlier dispute: that an employee holding seniority in both Group 1 and Group 2, but working a Group 2 position was to be considered a furloughed Group 1 employee and entitled to Group 1 work when it is available and he is eligible. Carrier had held an opposite position but changed it to conform with the General Chairman's view that the holding of a position in one seniority list does not affect his status in another.

In the case at issue, this principle need not be reasserted because of the fact that when he was assigned to the Group 1 work on July 2 and 3, Walker was not working, having been furloughed from his Group 3 job. No Agreement Rule was cited which made the furlough improper. He was, therefore, unassigned at the same time and properly used.

Award 9257, cited by the Organization, is distinguishable. There Class 2 employees were called upon to abandon work before their work day ended and assume a Class 1 position. In our case, Walker had already lost 2 days and the unassigned work to which he was assigned occurred on days on which he would not otherwise be at work. The opinion in Award 9257 is based on the fact that the day in question was not a rest day of the Claimant's position.

Moreover, when the parties reach an Agreement on the interpretation of their Agreement, as occurred here when both parties agreed that work in one group does not affect an employee's status in another group, that interpretation becomes paramount.

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 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 3rd day of March 1965.