

Award No. 13476

Docket No. CL-13213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5074) that:

(1) Carrier violated the rules of the Clerks' Agreement at Bluford, Illinois, on July 4, 1960, a legal holiday, when it blanked position No. 466, occupied by Clerk R. A. Green and assigned to other clerical employees duties regularly assigned to and performed by him.

(2) R. A. Green shall now be compensated for one day's pay at penalty rate for July 4, 1960 (pro rata rate of position \$18.68 per day).

EMPLOYEES' STATEMENT OF FACTS: There are employed at Bluford, Illinois, a force of employees who perform the clerical work incidental to the operation of the station and terminal, subject to the terms of the Clerks' Agreement between the parties.

Employees, positions, hourly assignments, rest days, rates of pay, etc. involved in this dispute are as follow:

Pos. No.	Title	Incumbent	Rate	Hours	Work Days
238	Chief Yard Clerk	F. W. Colwell	\$19.40	7 AM-3 PM	Monday-Friday
235	Perishable Clerk	W. E. Lewis	19.09	7 AM-3 PM	Thursday-Monday
466	Outbound Bill Clerk	E. D. Wiley	18.68	7 AM-3 PM	Wednesday-Sunday

Rest Day Relief Clerk R. A. Green relieves
236 Yard Checker, Sunday and Monday
466 Outbound Bill Clerk, Monday and Tuesday
245 Yard Checker, Wednesday

Duties regularly assigned the involved positions are as follows:

Position No. 238, Chief Yard Clerk—Keeps time roll for all employees; Makes arrangements with all concerned in connection with the listing of outbound trains; calls all train crews; calls switching crews;

OPINION OF BOARD: The Claimant in this case is the regularly assigned occupant of a Rest Day relief position. On Monday, July 4, 1960, one of 7 holidays observed in accordance with the Agreement, the Carrier blanked the Clerk's position occupied by the Claimant. It was anticipated that the work load would be light on this holiday, and that whatever work had to be done, could be accomplished by the Chief Yard Clerk and the Perishable Clerk. There were approximately three hours work of Claimant's position to be done if he had worked on the holiday. This was done by the Chief Yard Clerk and the Perishable Clerk. Claimant observed the holiday and was paid the holiday rate of pay. A claim was filed for an additional days pay at the penalty rate on the grounds that Carrier violated the agreement when it would not permit Claimant to work the holiday.

Carrier bases its action on Rule 43 (b) of the Agreement which provides that "Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below (5) five per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

Carrier contends that the above rule is controlling, and that in accordance with its provisions, it could dispense with Claimant's services on the day in question.

Petitioner alleges that Rule 37 (f) gives him a preferential right to be paid for work required on his position on an unassigned day. This rule reads as follows:

"(f) 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 employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

Petitioner further contends that for all intents and purposes Rule 37 (f) is identical with Section 3 (i) of Article II of the Chicago Agreement of March 19, 1949. "Holiday work" is considered here as work on unassigned days. When a holiday falls on a day assigned to a rest day relief employee, such work belongs to the rest day relief employee, that is the Rest Day relief employee is to be considered as the regular employee as that term is used in the 40 hour week agreement from whence came Rule 37 (f). Petitioner further bolsters his argument by quoting the following from instructions issued by Carrier.

"4. Work on a holiday shall be performed—

B. If on a regular relief assignment, by

(1) The regular incumbent."

The Carrier contends that these instructions simply represent its understanding of the proper methods of filling temporary vacancies and in no way constitutes an agreement with the employees as to the filling of these vacancies, further; that these instructions do not prohibit the Carrier from blanking a position on a holiday.

A review of the record in this case and a consideration of the arguments propounded by both sides, convinces us that in order for Claimant to be suc-

cessful, he would have been required to demonstrate an exclusive right to the work performed. The evidence indicates otherwise. These duties are performed by all three positions interchangeably. We agree with the Carrier that Rule 43 is controlling in this case and that as such Carrier was within its rights when it reduced the labor force on the day in question. The reliance by the Claimant on Rule 37 (f) and the letter of instructions quoted infra, is at best tenuous and we accordingly reject it. We rely essentially on Award 22, Special Board of Adjustment No. 170, involving the same parties and having the same force and effect as an award of the National Railroad Adjustment Board. We will deny the Claim.

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 15th day of April 1965.