

Award No. 13717
Docket No. CL-14452

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5465) that:

(1) Carrier violated the Clerks' Agreement effective May 1, 1953, when it failed to properly compensate an employe for service rendered on his assigned rest days on Saturday, December 1, and Sunday, December 2, 1962.

(2) Carrier shall now compensate Clerk L. F. Prather the difference between the pro rata rate that he was paid and the punitive rate he should have been paid for service rendered on dates of claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant L. F. Prather, seniority date October 31, 1936, was the regularly assigned occupant of Position No. 9, hours of assignment 8:00 A. M. to 4:45 P. M., 45 minutes for lunch, Monday through Friday, rest days Saturday and Sunday.

Clerk T. W. Blaylock, seniority date September 18, 1959, was the regularly assigned occupant of Relief Position No. 3, assigned to work Saturday through Wednesday, rest days Thursday and Friday as follows:

Saturday and Sunday, worked position No. 70, hours of assignment 4:30 P. M. to 12:30 A. M., rate \$21.5224 per day. Monday, worked position No. 77, rate \$20.7624 per day. Tuesday and Wednesday, worked position No. 78, rate \$20.7624 per day.

Mr. Blaylock occupying Relief Position No. 3, requested and was permitted to be absent on vacation Saturday, Sunday and Monday, December 1, 2 and 3, 1962.

Mr. Prather after working his regular assignment Position No. 9, Monday through Friday, was used to fill the vacancy on Position No. 70 on Saturday and Sunday created by Mr. Blaylock being on vacation, thereby requiring or permitting Mr. Prather to work on his assigned rest days and was paid at the straight time rate.

Correspondence exchanged in the regular order of appeal is attached here-

"We have repeatedly held that rest days attach to a position, not to an employee so that he may not carry them with him as he moves from one position to another. Consequently, under the exception of Rule 45 (c) the claim * * * is without merit."

The alleged claims presented in the Employees' ex parte Statement of Claim are not supported by the rules of the Schedule for Clerks and should be dismissed, and if not dismissed, then denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was regularly assigned to Position No. 9 with Monday through Friday as work days and Saturday and Sunday as rest days.

Having worked Monday through Friday on his Position, Claimant, on his earned rest days, worked Saturday, December 1, and Sunday, December 2, 1962, relieving an employee regularly assigned to work eight hours on those days who was absent on vacation. For the two days Claimant was paid the pro rata rate. The Claim is that he should have been paid the overtime rate.

This Board has repeatedly held that, absent a contractual exception, an employee cannot be required to work more than five consecutive days or forty hours without overtime compensation.

Carrier contends that the Agreement contains an exception. It cites Section 2 (a) of Rule 12, which in pertinent part reads:

"Employees worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another . . ." (Emphasis ours.)

From this it argues that Claimant, in working the two days under the circumstances involved, moved from one assignment to another and therefore came within the exception prescribed in the Rule.

A like issue was adjudicated in Award No. 6382 in which another carrier was involved. In rejecting the carrier's argument and sustaining the Claim we found:

" * * * The Carrier maintains that the facts in this case are covered by the exception to that general rule by assertion that the claimant performed his work 'due to moving from one assignment to another.'

"From a reading of the Agreement as a whole the Board must find that the aforementioned phrase is applicable only where a regularly assigned employee moves from one assignment to the other in the exercise of seniority bidding or displacement rights. In such a case the employee relinquishes all claims to his former assignment and acquires rights to the assignment which he bids in or displaces on. The claimant in this case retained his regular assignment and did not acquire rights to the position on which he was temporarily relieving a regularly assigned employee . . ."

That finding is equally applicable in our interpretation of the Agreement before us in light of the facts of record.

We hold that: (1) Claimant did not move from one assignment to another; and (2) he was contractually entitled to compensation at the overtime rate for the work performed on December 1 and 2, 1962. We will sustain 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.