Award No. 15803
Docket No. CL-16084

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5939) that:

(a) The Carrier violated the terms of the Agreement by its failure and/or refusal to properly compensate Mr. Duane Roylance at the proper rate of pay for December 27 and 28, 1964; and

(b) The Carrier shall now be required to pay to Mr. Roylance the differential between straight-time rate and the rate of time and one-half for dates of December 27 and 28, 1964.

EMPLOYES' STATEMENT OF FACTS: Mr. Duane Roylance is an established clerical employe of the Ogden Union Railway and Depot Company with seniority date of August 2, 1951. He holds an assigned position on the Yard Office Extra Board in the Yard Office Department at Ogden, Utah.

On December 16, 1964, the Chief Clerk to the General Yardmaster, Mr. Overton Zinn, issued the following assignment:

"(Item 7) From December 22 to December 28 incl. Crew Dispatcher Position 7-29, 8 A. M. to 4 P. M., Sunday and Monday off, $21.6504 per day. (Vice E. H. Chase on vacation.) D. Roylance in place of Chase. Eff 8:00 A. M., December 22."

Extra Clerk Roylance worked Position 7-29 in place of Mr. Chase from Tuesday, December 22, 1964 through Saturday, December 26th, or five days or forty (40) hours to the time of his completion of his shift on Saturday, December 26th. He had then earned two rest days of December 27th and 28th, and his assignment would then terminate on the date of December 28th.

The Chief Crew Dispatcher, Mr. C. E. Spinden, was scheduled to begin vacation December 27, 1964, for one week, or through January 2, 1965. The Carrier's Chief Clerk, Mr. O. Zinn, on December 23, 1964, issued the following assignment:

C – BRSC General Chairman Murdock's letter dated March 19, 1965, appealing the claim to the Carrier's Vice President, who is the highest officer of appeal on this property, as designated in Rule 16, containing provisions of the time limit on claims.

D – Carrier's denial letter dated March 30, 1965, in answer to Organization's General Chairman's appeal.

E – Carrier's letter dated June 7, 1965 to Organization's General Chairman, confirming result of conference discussion.

The Organization requested an extension on the time limit within which to file proceeding before this Board, which was granted from December 30, 1965 to February 28, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a Clerk holding an assigned position on Carrier's Ogden, Utah, Yard Office Extra Board, on December 16, 1964, was assigned by Carrier to vacation relief on Crew Dispatcher Position 7-29 from December 22 to December 28, inclusive, with Sunday, December 27 and Monday, December 28, as his rest days. He then made application in writing for, and on December 23 was assigned by Carrier to vacation relief on Chief Crew Dispatcher Position 7-186 from December 27 to January 2, inclusive, with Friday and Saturday as his rest days. He worked ten consecutive days — from December 22 to December 26, inclusive, on Position 7-29 and from December 27 to December 31, inclusive, on Position 7-186.

Brotherhood contends that under Rule 7 (the 40 Hour Work Week Rule in this Agreement), Carrier should have paid him time and one half instead of straight time for the sixth and seventh consecutive days of work which were the rest days of Position 7-29. According to Brotherhood, by applying Rule 7 (h) and (i), Claimant's rest days and the sixth and seventh days of his work week on Position 7-29 are determined as December 27 and 28, and since he worked on those days he is entitled to time and one half for that work under Rule 7(j) and (k).

Carrier defends by arguing that he was properly paid because on December 27 Claimant moved from one assignment (on Position 7-29) to another (on Position 7-186), thus bringing into play the exception in Rule 7 (j) to payment of the overtime rate for work in excess of 40 hours or on the sixth or seventh day of a work week "where such work is performed by an employe due to moving from one assignment to another . . .", and, further, that since by making written application for the vacancy under Rule 31 (d), he voluntarily relinquished his assignment on Position 7-29, he also relinquished its work week and the rest days assigned to it, and had to assume those of Position 7-186.

On a number of occasions we have dealt with and rejected the argument that moving from one short vacancy to another is to be considered moving from one assignment to assignment as contemplated in the exception spelled out in the 40 Hour Work Week Rule; our Award 5494 (Whiting), which has been generally followed in this connection, deals with the question in depth and concludes:

"In this case the claimant, a furloughed employe, was recalled to service on May 24, 1950, and utilized to fill three vacant positions pending assignment thereof. In the course of that service the Carrier caused him to work six days within one work week. Moving from one vacancy to another is not the equivalent of moving from one assignment to another, so the exception does not apply and the claim is sustained."

Awards 6503 and 6561 (Leiserson) are cited in behalf of Carrier. It is possible to read them as differing from the above principle, but they may be distinguished in connection with both of Carrier's defenses, among other reasons, because the claimants involved in both the Leiserson cases voluntarily moved from the claimant's **regularly assigned position** to fill a short relief vacancy, while the moves involved in Award 5494 were from claimant's **furloughed status** to three successive short **temporary vacancies**; and, in the case before us now, the voluntary move of the involved **extra employe** is from one **short term vacation relief** to another. We hold that the move here involved was not the equivalent, within the meaning intended in Rule 7 (j), of a move from one assignment to another.

Carrier's second listed position is based on its argument that Carrier was required under Rule 31 (d) to honor Claimant's written application for it and assign him to the vacation relief vacancy on Position 7-186, and that Rule 31 (d) specifically says:

"Such employe shall take the conditions of the assignment, including rest days, until such time as the position is again filled by a regular occupant."

However, another employe then on the extra list with more seniority or then unassigned, but who had not filed written application under Rule 31 (d), would, under the normal operation of the Extra Board Agreement, have been entitled to and required to take the assignment. By the explicit terms of the Agreement, if there is a conflict between the Extra Board Agreement and any other term of the Agreement or practice under it, the Extra Board Agreement must be applied. Thus, the argument of Carrier that Claimant's application under Rule 31 (d) entitled him to, and that it was required to give him, the assignment under the terms of that Rule does not stand up. If Claimant were the senior available qualified employe on the Extra Board, he would be entitled to and required to take, the assignment without having made written application; if he were not the senior available qualified employe on the Extra Board, as he was not since he was then on an uncompleted assignment, the vacancy should have been otherwise filled, and not necessarily by Claimant. The question of who, other than Claimant, should have been assigned was not put before us, nor was information to answer it. It is sufficient for our purposes in this case that if Claimant was in fact the correct employe for the assignment, because no other employe with superior rights was available, it was not because he filed written application for it under Rule 31 (d), but because it was his turn to be offered and assigned the work involved.

It is well established that an extra employe, taking an assignment relieving on a regular position, is required to take all of the conditions of that position, including its work week and rest days; and, if he works on those rest days or on the sixth or seventh day of the work week, whether

on that position or otherwise, under Rule 7 he is entitled to the time and one half rate for such work. Carrier's position in this case seeks to make an exception to this, which is not explicit anywhere in the Agreement, by saying that such an extra employe can opt, before completing it, to terminate an assignment to a temporary position to which he has properly been assigned in order to fill a different temporary vacancy. If this were allowed, it would permit a senior extra employe to work more than 40 hours in a week while a junior extra employe was completely idle that week; it would be possible for extra employes to opt to waive some of the rights negotiated for them in Rule 7, and to work vacation relief assignments successively without rest days off or time and one half for working them for as long as those assignments were available. To apply the Agreement with such a possible result would run counter to the clear basic intention of the 40 Hour Work Week Agreement. We cannot read such an additional exception to Rule 7 into the Agreement without convincing proof that the parties intended it. No such proof is in this record.

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 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 19th day of September 1967.

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