

Award No. 16516
Docket No. CL-17011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6225) that:

(1) The Carrier violated the Rules in the current Clerks' Agreement when it failed and refused to call Mr. Earl Frembes, seniority date January 17, 1925, to work his assigned relief days.

(2) Mr. Earl Frembes shall now be paid eight (8) hours' pay at the one and one-half rate Monday and Tuesday, August 23 and 24, 1965.

EMPLOYEES' STATEMENT OF FACTS: Mr. Earl Frembes, seniority date January 17, 1925, is the regular assigned incumbent of Assistant Stationmaster position, Hartford, Connecticut, with assigned work days of Sunday, Wednesday, Thursday, Friday and Saturday — hours 11:55 P. M. to 7:55 A. M. — relief days Monday and Tuesday, rate \$25.46 per day.

Monday, August 23 and Tuesday, August 24, 1965, the regular relief Assistant Stationmaster reported off from duty thereby causing a vacancy to exist on both the Claimant Frembes relief days. There being no spare available qualified employees to work the assignment at the pro rata rate the Carrier disregarded the application of our rules of the current Agreement and assigned the disputed dates at the punitive rate, to a junior employee Patrick Daley, seniority date April 7, 1925, in violation of Rule 54 and Spare Work Rule of the current Clerks' Agreement.

September 17, 1965 Chairman of Protective Committee filed claim. (See Exhibit A.)

November 10, 1965 Trainmaster declined payment. (See Exhibit B.)

January 7, 1966, Division Chairman appealed claim. (See Exhibit C.)

March 2, 1966, Superintendent declined payment. (See Exhibit D.)

The claim is denied.

Yours truly,

/s/ J. J. Duffy, Director,
Labor Relations and
Personnel."

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claimant, Mr. E. Frembes, owned regular assignment as Assistant Stationmaster at Hartford, Connecticut, 11:55 P. M. to 7:55 A. M., with relief days Monday and Tuesday.

On Monday and Tuesday, August 23 and 24, 1965, the regular relief Assistant Stationmaster reported off because of illness and it was necessary to fill the position. As there were no spare Assistant Stationmasters available at straight time rate, a junior Assistant Stationmaster was doubled on the dates involved.

Claimant, E. Frembes, had suffered a heart attack on January 29, 1961, and following his return to work on June 4, 1961, he had advised the Stationmaster that he did not wish to be called for any spare work unless he specifically asked for it, due to the condition of his health.

Claim was initiated by the Local Chairman on September 17, 1965, in behalf of Mr. Frembes, requesting two days' pay at \$25.4616, or a total of \$50.92. The claim was denied on November 10, 1965, by Trainmaster Daley.

In subsequent appeal through the usual channels the claim was increased to the time and one-half rate, or a total of \$76.38.

Copy of decision, dated June 30, 1966, by the undersigned is attached as Carrier's Exhibit A.

Copy of Agreement effective September 15, 1957, between this Company and the Brotherhood of Railway Clerks is on file with this Board and, by reference, is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involved rights arising from the 22 January, 1962, Agreement, which reads in part as follows:

"SPARE WORK AND WORK ON HOLIDAYS

It is agreed that Spare work will be covered as follows:

* * * * *

1. The spare qualified available clerk who has not performed 40 hours of straight time work in his work week and who is available at straight time rates.
2. The employe who is regularly assigned to work the position five days a week, if available, or

3. The senior qualified available clerk.
4. A spare clerk will not be used to cover any position if he is not available at straight time rates." (Emphasis ours.)

Claimant was the regular assigned incumbent of Assistant Stationmaster. His rest days of Monday and Tuesday were included in a regular relief assignment. On claim dates, the regular relief employe was absent and Daley, junior in seniority to Claimant, worked the position at the punitive rate while Claimant was never called. Clearly, Claimant, if available, should have been called.

Carrier contends that Claimant was not available because of a heart condition. Carrier further asserts but the Organization denies that Claimant had advised Carrier that he did not desire any spare work. However, Carrier showed that during that year Claimant took all twenty days of his vacation in installments of one day per week, and always coupled with his relief days so that, in effect, he was only working a four-day week for twenty weeks of the year.

The evidence is unrefuted regarding Claimant's heart condition. In addition, the situation surrounding Claimant's vacation is probative of the fact that Claimant had advised Carrier he did not desire any spare work. Therefore, we hold that the Carrier acted reasonably in relying upon Claimant's statement and not calling him. See Awards 14208 (Perelson) and 15809 by this referee.

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 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 26th day of July 1968.

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