

Award No. 16793
Docket No. CL-16797

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**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6183) that:

1. Carrier violated the Clerks' Rules Agreement at Aberdeen, South Dakota when it failed to call the regularly assigned occupant of a rest day relief position which relieves Position 2094 on the last day of his work week, for overtime work occurring on Position 2094, and in lieu thereof called an unassigned junior employee who had already performed 8 hours of work that day.

2. Carrier shall be required to compensate employee F. Schriever for eight (8) hours at the overtime rate of Caller Position No. 2094 for July 10, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee F. Schriever is regularly assigned occupant of Relief Caller Position No. 2095 at Aberdeen, South Dakota. His seniority date is March 12, 1947 in District No. 56. His relief assignment and hours of service are as follows:

Pos. 2092 - 7:59AM to 3:59PM - Sunday
Pos. 2093 - 3:59PM to 11:59PM - Monday & Tuesday
Pos. 2094 - 11:59PM to 7:59AM - Wednesday & Thursday
(Rest Days - Friday & Saturday)

Position No. 2092 is a 7-day position; however, the Saturday rest day thereof is an unassigned day and furloughed employee E. W. Rogers, who has a seniority date of May 28, 1964, is regularly used to relieve Position No. 2092 on the unassigned Saturday rest day thereof.

On Saturday, July 10, 1965, employee E. W. Rogers relieved Position No. 2092 from 7:59 A.M. to 3:59 P.M. and was recalled on the same day and used to fill Caller Position 2094 from 11:59 P.M. to 7:59 A.M. which was temporarily vacant due to the occupant thereof, John Larson, calling in and

Rule 12(e) reads in pertinent part as follows:

"Furloughed employees wishing to be considered for work on unfilled new positions or temporary vacancies of thirty (30) days or less duration, must advise the Carrier to that effect by filing an 'Available for Work' form in duplicate with the Carrier officer authorized to bulletin and award positions, and in addition will furnish a copy of such form to the local and division chairmen. Such form will show the location at which the employee filing such 'Available for Work' form wishes to perform work on unfilled new positions or temporary vacancies of thirty (30) days or less duration, or vacation relief as referred to in Article 12 (b) of the Vacation Agreement of December 17, 1941. A separate 'Available for Work' form shall be filed for each location, except one form may be used when the employee wishes to be recalled for work throughout the seniority district but such intent must be clearly indicated. 'Available for Work' forms may be filed at any time during the period the employee is furloughed. The Carrier officer shall promptly sign and return to the employee, as his receipt, one copy of the 'Available for Work' form so filed. 'Available for Work' forms will not become effective until receipted for by the Carrier. Furloughed employees with sufficient fitness and ability filing such 'Available for Work' form will be recalled in the order of their seniority for unfilled new positions or temporary vacancies of thirty (30) days or less duration at the location shown on the 'Available for Work' form and shall be required to return when called. When two or more opportunities for work having the same starting time occur at the same location and 'Available for Work' employees are to be used, the senior employee shall be given preference. Unless or until a furloughed employee has filed an 'Available for Work' form in accordance with the provisions of this paragraph, the Carrier shall have no obligation to recall him for unfilled new positions or temporary vacancies of thirty (30) days' or less duration, nor will there exist any basis for claim because of his not being so called."

Under the aforequoted provisions of Rule 12(e), furloughed employee Rogers was called to fill the temporary vacancy on Position No. 2094 on July 10, 1965 for which service he was paid 8 hours at the straight time rate.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of June 7, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regularly assigned occupant of Relief Caller Position at Aberdeen, South Dakota, with a work week Sunday through Thursday, Fridays and Saturdays being his rest days. His regular assignment on Thursdays is to relieve Position No. 2094 from 11:59 P. M. to 7:59 A. M. Rogers, a furloughed employee with less seniority than Claimant, is used regularly to relieve Position No. 2092 on Saturdays from 7:59 A. M. to 3:59 P. M.

On Saturday, July 10, 1965, Rogers worked on Position No. 2092 from 7:59 A. M. to 3:59 P. M.; he then was called by Carrier and used to fill Position No. 2094 from 11:59 P. M. to 7:59 A. M.; that position required relief because of the illness of the regular incumbent.

Brotherhood contends that Rogers' work on Position No. 2094 on July 10th was overtime work and that Claimant should have been assigned the overtime rather than Rogers.

Rogers was paid only straight time for the work on July 10 from 11:59 P. M. to 7:59 A. M., and no claim for overtime rate was filed for him. Carrier takes the position that "inasmuch as there was no overtime performed on caller Position No. 2094 on the date of the instant claim, i.e., July 10, 1965, there is absolutely no basis for the instant claim . . ."

It has long been established by us that, for purposes such as determining overtime, a "day" is the twenty-four hour period beginning at the start of the previous assignment (Award No. 687 — Spencer; and, more recently, Award 14927 — Brown). Rule 32(b) says:

" . . . time in excess of eight (8) hours, exclusive of the meal period, on any day, will be considered overtime . . ."

Thus it is clear, in spite of the fact that Carrier did not pay him overtime, that the time from 11:59 P. M. to 7:59 A. M. on Position No. 2094 on the day in question was overtime for Rogers: his "day" on that occasion started at 7:59 A. M. that morning when he started his shift on Position No. 2092. It would also have been overtime for Claimant who was on his rest day.

In Section 4 of the Memorandum of Agreement between the parties we find:

"When an employe is called for overtime work on other than a holiday and the work is preponderantly the duties of a specific position, the employe regularly assigned to that position will be called. If that employe is unavailable, the senior available employe with sufficient fitness and ability in the 'sub-division' will be called.

NOTE: In applying the provisions of this section 'the employe regularly assigned to that position' means the employe assigned to fill that position on that particular day will be called. If such employe is the regular occupant and he is unavailable, then the relief occupant of that position, if any, will be called or vice versa. In connection with an employe regularly assigned to a rest day relief position, it is understood the position to which he is regularly assigned to relieve on the last day of his work week is the only position to which the provisions of the preceding sentence apply."

Claimant, as the relief occupant of the position on which the overtime was required, had a right to be used for the overtime work before Rogers.

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 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 21st day of November 1968.