



Award Number 17566

Docket Number CL-16677

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6141) that:

- (1) The Carrier violated rules of the Clerks' Agreement when they did not allow Clerk M. S. Poole to work his assigned position, the Swing Relief Clerk at Hermitage and Brown Street Yard Offices, Richmond, Virginia on October 27 and 28, 1965.
- (2) Clerk M. S. Poole be paid a day's pay each for Wednesday and Thursday, October 27 and 28, 1965 at the rate of the Swing Relief Clerk position, \$22.66 per day.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. S. Poole, hereinafter referred to as Claimant, holds clerical seniority on District 12, in which Hermitage and Brown Street Yard Offices, Richmond, Virginia, are located.

On October 12, 1965, the Carrier posted a Clerks' Bulletin, Advertisement No. 71, vacancy of J. R. Mihu, position of Swing Relief Clerk. The assigned work days, Sunday through Thursday with Friday and Saturday rest days. The location of this position is Yard Offices, Hermitage and Brown Street, Richmond, Virginia, with rate of pay \$21.91 per day (Employees' Exhibit "A").

On October 21, 1965, the Carrier posted a Clerks' Bulletin, Clerical Assignment, assigning Clerk M. S. Poole to the position of Swing Relief Clerk, Yard Offices, Hermitage and Brown Street, Richmond, Virginia, vacancy of J. R. Mitu, Advertisement No. 71. Also, on this bulletin was Advertisement No. 76, vacancy of M. S. Poole, with work days Friday through Tuesday and rest days Wednesday and Thursday. This was position of Yard Clerk at Brown Street Yard, Richmond, Virginia, with rate of \$21.91 per day. (Employee's Exhibit "B").

On October 29, 1965, the Carrier posted a Clerks' Bulletin, Clerical Assignment in which they assigned J. W. Bottoms, Jr. to Advertisement No. 76, vacancy of M. S. Poole. (Employee's Exhibit "C").

On November 4, 1965, District Chairman F. L. Walker, Jr. filed claim with Terminal Trainmaster T. P. Moody at Richmond, Virginia. Terminal Trainmaster Moody declined the claim on November 12, 1965 and I quote below the correspondence exchanged:

OPINION OF BOARD: Claimant M. S. Poole was on Thursday, October 21, 1965 assigned by bulletin a new position with Carrier with rate of \$21.91 per day. He was, however, held on his old position which paid at the same rate of \$21.91 per day until relieved on October 29, 1965.

The work week on the old position was Friday through Tuesday with Wednesday and Thursday rest days whereas the new position work week was Sunday through Thursday with Friday and Saturday rest days. The timing of relief from the old position caused Claimant to be idle Wednesday, Thursday, Friday and Saturday, October 27 through 30, 1965 and this claim is for a day's pay for Wednesday and Thursday, October 27 and 28.

Organization contends that the Agreement was violated, citing Rules 10(d) and 53 as controlling. Carrier responds that the rate of the two positions was the same so Rule 10(d) was not violated, that Rule 10(d) is specific and Rule 53 is general, therefore Rule 10(d) controls, and that the whole thing is also covered by Rule 44(c) anyway instead of Rule 53.

Rule 10(d) and Rule 53 clearly apply while Rule 44(c) does not since it deals with a reverse situation where rest days were lost, not gained, but applying, was either violated?

There is no merit to the argument that Rules 10(d) and 53 are at odds. They deal with different subjects and both here apply. Claimant's rate of pay is fixed by Rule 10(d) and the number of days in his work week is fixed by Rule 53. Since the rates of the two positions are the same and the option to transfer or pay the higher rate is clearly open to Carrier Rule 10(d) cannot have been violated.

Rest days go with the assignment and Carrier contends in essence that Claimant got five days work in one week on one job and then five days work in the next week on the new job. This reasoning has merit except for one thing: Rule 43(i) defines a "work week" for regularly assigned employees as beginning on the first day on which the assignment is bulletined to work. Thus the work week of the old position carried work days October 22, 23, 24, 25, and 26 and rest days October 27 and 28 while the new position work week carried work days commencing October 31 so days October 29 and 30 created a 2-day hiatus.

This hiatus was created by Carrier's election to hold Claimant beyond five days in his old position for reasons adequate to Carrier. Having made that election in reliance on Rule 10(d) Carrier had the option of paying Claimant for October 29 and 30 as part of the work week of the new position or being in violation of Rule 53. Carrier chose option 3. Carrier cannot rely on rights under Rule 10(d) without performing the ensuing obligation under Rule 53.

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 violated.

A W A R D

Claim sustained for two aays pay at the rate of \$21.91 per day.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Exeutive Secretary**

Dated at Chicago, Illinois, this 30th day of October 1969.