



Award Number 17573
Docket Number CL-17734

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6435) that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to compensate employee Charlotte Esposito at the time and one-half rate for 8 hours work performed on Position 73450 for Sunday, August 14, 1966, after having completed 40 straight time hours in her workweek.
2. Carrier shall now be required to compensate employee Charlotte Esposito for four (4) hours at the straight time rate of pay of Position 73450 for Sunday, August 14, 1966.

EMPLOYEES' STATEMENT OF FACTS: Employee Charlotte Esposito, who has a seniority date of May 23, 1966 in Seniority District No. 63, is an unassigned or furloughed telephone operator; and being an unassigned employee, was used to fill the following vacancies during the period from August 8, 1966 through August 14, 1966 inclusive:

Monday	8/ 8/66	Switchboard Oper.	Pos No. 73460	9 AM - 6 PM	Rate \$20.7264
Tuesday	8/ 9/66	Switchboard Oper.	Pos No. 73410	4 PM - 12 M	Rate 21.4224
Wednesday	8/10/66	Switchboard Oper.	Pos No. 73410	4 PM - 12 M	Rate 21.4224
Thursday	8/11/66	Switchboard Oper.	Pos No. 73410	4 PM - 12 M	Rate 21.4224
Friday	8/12/66	Switchboard Oper.	Pos No. 73410	4 PM - 12 M	Rate 21.4224
Saturday	8/13/66	(Rest Day)			
Sunday	8/14/66	Switchboard Oper.	Pos No. 73450	8 AM - 4 PM	Rate 20.7264

See copy of employee Esposito's statement of March 25, 1967, Employees' Exhibit "A".

Employee Esposito had worked 40 hours in her work week as an unassigned employee as shown above and therefore earned her rest days. She took her first rest day on Saturday, August 13, 1966; however, on Sunday, August 14, 1966 her second rest day, she was called to fill a vacancy on Position 73450, and was paid only the pro rata rate for service performed on that day.

Claim for an additional 4 hours at the pro rata rate of Position 73450 for Sunday, August 14, 1966 was filed with Communications Engineer D. Wylie under date of October 8, 1966 and was declined by him on November 8, 1966. See Employees' Exhibit "B".

(d) Employees worked more than five 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 or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27." (Emphasis ours)

In accordance with the specific provisions of either aforementioned Rule 32(c) or Rule 32(d), claimant Esposito received the straight time rate of pay for the service she performed on the claim date of the instant claim, i.e., August 14, 1966, and properly so, because such work was performed "* * * due to moving from one assignment to another or to or from an extra or furloughed list * * *".

Attached hereto as Carrier's Exhibits are copies of the following:

Copy of letter written by Mr. S. W. Amour,
Vice President-Labor Relations, to Mr. H.
C. Hopper, General Chairman, under date of
May 24, 1967 Carrier's Exhibit "A"

Copy of letter written by Mr. Amour to Mr. Hopper
under date of November 13, 1967 Carrier's Exhibit "B"

Copy of letter written by Mr. Amour to Mr. Hopper
under date of November 16, 1967 Carrier's Exhibit "C"

Copy of Form PR-1, General Time and Distribution
Record, covering employee Esposito for, among
other dates, August 8, 1966 Carrier's Exhibit "D"

Copy of the Chief Switchboard Operator's
ledger record of work assignments on
August 8, 9, 10, 11, 12, 13 and 14, 1966 Carrier's Exhibit "E"

Copy of Form PR-1, General Time and Distri-
bution Record, covering employee M. T.
Ramaglia for, among other dates, August 8,
1966 Carrier's Exhibit "F"

(Exhibits Not Reproduced)

OPINION OF BOARD: The facts are undisputed. Claimant is an unassigned furloughed telephone operator. She filled switchboard operator vacancies on Monday, August 8, 1966, through Friday, August 12. Saturday, August 13 was a rest day. Sunday, August 14 through Thursday, August 18, Claimant filled another switchboard operator position while the regular occupant was on vacation.

Claimant relies on the following rules to support her claim:

"RULE 27—40 HOUR WEEK

(a) —General

There is hereby established for all employees, except those occupying positions listed in Rule 1 (b), a work week of forty (40) hours, consisting of five days of eight (8) hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. This rule is subject to the following provisions:

(i)—Beginning of Work Week

The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

"RULE 32—OVERTIME

(c) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27.

(d) Employees worked more than five 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 or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27."

"RULE 33—SERVICE ON REST DAYS

(c) Service rendered by an employee on his assigned rest day, or days, relieving an employee assigned to such day shall be paid at the rate of the position occupied or his regular rate, whichever is the higher, with a minimum of eight (8) hours at the rate of time and one-half."

Carrier contends claim should be denied. Carrier bases its defense on Article 12 (b) and (d) of the Vacation Agreement. Carrier also states that the exceptions in Rule 32 (c) and (d) prevent a sustaining of this claim.

We cannot agree. We uphold Claimant's position that Carrier's references to the Vacation Agreement are irrelevant in this case. We also uphold Claimant's answer that the exceptions listed in Rule 32 (c) and (d) are not controlling in this case because Claimant is an unassigned furloughed employee with no assignment to move to and from.

We believe that Claimant clearly is covered by Rule 27 (i) which establishes for her a work week of Monday through Sunday. Since Claimant had worked 40 hours during her work week from August 8-12, she is entitled to be compensated at the time and one-half rate for work on Sunday, August 14.

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.

Claimant was entitled compensation at the rate of time and one-half for work performed on Sunday, August 14, 1966.

A W A R D

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 October 1969.