

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) Carrier violated rules of the Agreement, effective January 1, 1950, in assigning an employe junior (seniority) to James T. Witter, who was available, to fill temporary vacancy in position of third shift Clerk, Dupo Yard, on February 14, 1951;

(2) Mr. Witter be allowed time lost, equivalent to one day's pay, at the overtime rate attached to the third shift clerical position, namely, \$20.68.

EMPLOYEES' STATEMENT OF FACTS: Relief Clerk James T. Witter is regularly assigned to Swing Job No. 10 Position No. 37 in the Wiggins East Side seniority district on the following schedule:

Day of Week	Hours of Assignment	Points Worked
Sunday	12 M. M. to 8:00 A. M.	Dupo, Ill.
Monday	12 M. M. to 8:00 A. M.	Dupo, Ill.
Tuesday	Day of Rest	
Wednesday	Day of Rest	
Thursday	11:00 P. M. to 7:00 A. M.	L&N—Big 4 Conn.
Friday	11:00 P. M. to 7:00 A. M.	Manifest No. 2 Yd.
Saturday	11:00 P. M. to 7:00 A. M.	Manifest No. 2 Yd.

Robert G. Reister is regularly assigned to the third shift Yard Clerk position, Dupo Yard Office, Wiggins East Side District No. 34, hours of service—12 M. M. to 8:00 A. M.—designated days of rest, Sunday and Monday of each week.

From the foregoing it will be noted that Mr. Reister was scheduled to work the third shift on Wednesday, February 14, 1951. However, at or about 10:30 P. M., Mr. Reister notified the Chief Yard Clerk that he was ill and would be unable to report for work. Management made no effort to call Mr. Witter, who was the senior available clerk off on his designated rest day.

We do not think anyone's judgment in filling a vacancy arising on short notice should be subject to criticism. Certainly it is not a proper basis for a time claim and it should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: On the date in question James T. Witter, seniority date January 24, 1942, was a regularly assigned relief clerk on Swing Job No. 10, position No. 37, Wiggins East Side seniority district, with Tuesday and Wednesday as his rest days. The third shift yard clerk position, hours 12 midnight to 8:00 A.M., Dupo yard office, same seniority district, was held by R. G. Reister. At 10:30 P.M. on February 14, 1951, the latter notified the chief yard clerk, who was in charge of the office, that he would be unable to protect his assignment starting at 12 midnight that night because of illness. There were no qualified furloughed or extra men available to fill this temporary vacancy and Claimant was the senior available clerk. Without making any attempt whatsoever to call Claimant the chief yard clerk instructed one Blackburn, an employe holding junior seniority, who was working on the second shift position in the Dupo yard office to double over on the third shift. As a result the instant claim was filed, progressed and denied on the property and eventually brought to this Division for decision.

There is no real dispute respecting the facts of this case. The Carrier virtually concedes that under ordinary conditions the seniority rules of the Agreement, particularly Rule 7, would have required it to call Claimant, as the senior, qualified, and available employe, to fill the temporary vacancy. In fact the only serious defense it makes to the claim is that due to inclement weather conditions, the distance Claimant lived from the yard office, and the fact there was only an hour and a half advance notice of the vacancy, it was faced with such an extraordinary situation it was justified in requiring Blackburn to double over notwithstanding requirements of the seniority rules of the Agreement. We are unable to agree. The record discloses that Claimant owned an automobile and that it was only a thirty minute drive from his home to the Dupo yard office. This Division of the Board has long been committed to the rule that under like circumstances failure of the Carrier to make any attempt to call the senior employe entitled to perform the work resulted in a violation of the Agreement.

See Award No. 4200, later cited and approved in Award No. 4841, where it is said:

"Under the facts here shown, we think the Carrier was obliged to call claimant to perform this work. Of course, if claimant could not be found after a reasonable attempt to contact him had been made, the Carrier would be justified in calling someone else. The record here shows that the Carrier made no attempt whatever to contact the claimant. He was only three or four miles away from his home station, not an unreasonable distance under modern methods of transportation. We agree with the Organization that the Carrier wrongfully ignored the seniority rights of the claimant."

There is no merit to contentions advanced by Carrier to the effect (1) that by established practice it was relieved from attempting to call Claimant because it had not had at least one shift notice of the vacancy and (2) that the chief clerk, who gave the order resulting in Claimant not being called, was covered by the Agreement and hence it should not be held responsible. The first of these contentions is not sustained by the record and the fallaciousness of the second is too obvious it warrants no further comment.

What has been heretofore stated means the claim must be sustained but not at the overtime rate. Under the existing conditions and circumstances

reparation should be limited to the rate which the employe to whom the work was regularly assigned would have received if he had performed it. That would have been the pro rata, not the punitive rate. See, e.g., Award No. 4467 one of the decisions on which the Organization relies to sustain its position the Agreement was violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the Agreement.

AWARD

Claim sustained at the pro rata rate as per the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of September, 1952.